

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 11 December 2007

Session 3

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

9th Meeting 2007, Session 3

CONVENER

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

DEPUTY CONVENER

*Alex Neil (Central Scotland) (SNP)

COMMITTEE MEMBERS

Ted Brocklebank (Mid Scotland and Fife) (Con)

*Alasdair Morgan (South of Scotland) (SNP)

*Irene Oldfather (Cunninghame South) (Lab)

*John Park (Mid Scotland and Fife) (Lab)

*Gil Paterson (West of Scotland) (SNP)

*Iain Smith (North East Fife) (LD)

COMMITTEE SUBSTITUTES

Jackie Baillie (Dumbarton) (Lab)

Keith Brown (Ochil) (SNP)

Jackson Carlaw (West of Scotland) (Con)

Jeremy Purvis (Tweeddale, Etrick and Lauderdale) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Jackie Baillie (Dumbarton) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Stephen Boyd (Scottish Trades Union Congress)

Professor Russel Griggs (CBI Scotland)

Nicola Sturgeon MSP (Deputy First Minister and Cabinet Secretary for Health and Wellbeing)

CLERK TO THE COMMITTEE

Dr Jim Johnston

ASSISTANT CLERKS

Emma Berry

Lucy Scharbert

LOCATION

Committee Room 2

Scottish Parliament

European and External Relations Committee

Tuesday 11 December 2007

[THE CONVENER *opened the meeting at 10:01*]

Scottish Government's National Conversation

The Convener (Malcolm Chisholm): Good morning, and welcome to the ninth meeting of the European and External Relations Committee in this session. We have apologies from Ted Brocklebank. I think that Jackie Baillie will be attending, so I welcome her in advance to the meeting.

The first item on our agenda is to take evidence from the Deputy First Minister and Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, on the Scottish Government's white paper, "Choosing Scotland's Future". When the committee first considered its approach to the white paper at its meeting on 4 September, members agreed to write to the First Minister to seek clarification on a number of points. The Deputy First Minister responded and, at the committee's meeting on 30 October, members agreed to invite her to explore those issues in more detail.

We welcome Nicola Sturgeon, and her accompanying officials: Jan Marshall, deputy director of the constitutional and parliamentary secretariat; Gerald Byrne, head of the constitution unit; and Donald Cameron, head of the national conversation team. I invite Nicola Sturgeon to make an opening statement, and then we will move on to questions.

The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon): It is a pleasure to be here to talk about a matter that is so close to my own heart and, I know, close to the hearts of many members of the committee. I am grateful that the committee has given me the opportunity to come along and talk about the Government's national conversation, which, as members will recall, was launched on 14 August this year.

There is no doubt that, since devolution 10 years ago, people in Scotland have started to take much more direct responsibility for our own affairs. Within the constraints of the devolution settlement, it is undeniable that, nevertheless, there have been many changes and some considerable achievements. I am thinking, for example, of the

long-overdue reform of land law, the smoking ban that led the way across the United Kingdom and the introduction of free personal care. Those are all considerable achievements that show what can be done when Scotland has the power to act.

Nevertheless, the Government believes that the constraints of the current devolution settlement have become more and more apparent over the 10 years since the Scotland Act 1998 was passed. The election of a Scottish National Party Government in May this year gives all of us in this Parliament, as well as people the length and breadth of the country, an opportunity to take stock and to look to the future.

For many years now, the debate about Scotland's constitutional future has tended to be very much polarised between independence on the one hand and the status quo on the other. It is no secret that I and my colleagues in the SNP—and, indeed, in the SNP Government—support the option of independence.

However, in launching the national conversation, we deliberately set out to engage people in a much wider debate about the responsibilities that they think the Parliament and the Scottish Government should have in the future. The Scottish Government believes in independence for Scotland, but we recognise that there are a range of different views across Scotland and in the Parliament. As well as setting out our support for independence, "Choosing Scotland's Future" includes other options for how our constitutional position could be developed. Above all else, the national conversation recognises clearly that the people of Scotland have an undeniable right to express their view on and to make decisions about their future.

In the first phase of the national conversation, activity has been based mostly on the website and blog. More than 345,000 hits and 25,000 downloads of the white paper make the national conversation website and blog among the most successful ever operated by any Government in the United Kingdom. I will say more about the next steps for the conversation in a couple of moments.

The conversation is about more than a website. It has also stimulated a considerable amount of media, academic and public debate and has provoked considerable interest from business, the voluntary sector and professional bodies across civic Scotland. Perhaps the biggest success of the conversation so far is its significant contribution to the conversion of the main Opposition party in the Parliament to the case for change. I agree that last week's debate in the Parliament was historic, if only for Labour's significant U-turn from implacable opposition to any change to a welcome, if belated, recognition of the need for a

wholesale review of the powers of the Scottish Parliament.

Our objective in the first phase of the conversation was for Scotland to move from polarised debate to mature conversation. I believe that we have achieved that. The national conversation on Scotland's constitutional future is now firmly established. Despite our disagreements about the nature of the change that is required, all the political parties that are represented in the Parliament now agree that the status quo is no longer an option. That is a considerable achievement.

Having successfully established the national conversation, we plan three main elements in its second phase. First, the Government will lead debate across a range of big issues affecting the future of Scotland, including the economy, energy and the environment, Europe and foreign affairs, and defence. Secondly, the public will be enabled to express their views directly, building on the suggestions in the blog for public events. Thirdly, we will continue to address with the UK Government the issues and problems that we have identified—for example, broadcasting, elections, spending and taxation, compensation for farmers and firearms law—where further devolution now would allow us to meet Scotland's needs, instead of waiting for UK action. We are sure that many other issues—energy policy, climate change and the marine environment, to name just a few—will arise. We will also seek to extend the responsibility of Scotland in those areas, with the support of this Parliament, when that is required. Any responsible Government should take action to address those and other issues, as part of its normal day-to-day business. However, such actions also contribute to the national conversation, by illustrating in a real and practical way the importance of constitutional issues to our nation, both now and in the future.

Before I conclude, it is worth my contrasting the inclusive, open and wide-ranging nature of the national conversation with the constitutional commission that is proposed by the main Opposition parties. Although we welcome any contribution to the national conversation, we regret that the Parliament has agreed to establish a commission that deliberately excludes independence—not just the favoured option of the largest party in the Parliament, but the favoured option of a substantial proportion of the Scottish people. The national conversation lets all people across Scotland have their say, whereas the commission would restrict debate to an elite few and seek to dictate what could and could not be discussed. The national conversation purposely invites views on all the options for change, not just on the Government's preferred option, and does

not limit those options, as the commission tries to do.

Although I welcome the commission, to an extent, and agree that its report will make a contribution to the conversation, its limited nature means that its work cannot replace the national conversation, which will continue to engage directly with the Scottish people over the months ahead, with the overall purpose of letting the people of Scotland decide their own future in a referendum.

The Convener: When Jackie Baillie was the convener of the European and External Relations Committee, the committee wrote to the First Minister to ask about the timetable and format of the consultation. In your reply, you said:

“the Government will report to Parliament on the next steps in due course.”

There was a Government statement in the intervening period about something being said about that on St Andrew's day. However, although there was a notable contribution to the constitutional debate by my leader on St Andrew's day, there was no announcement by the Government. What happened to it? Will it be forthcoming soon? I thought that the announcement was to be about the next stage of the consultation and, in particular, its format.

Nicola Sturgeon: We will report to Parliament on the success of the first stage of the national conversation. This morning, I have given you some brief indications of the key elements of the next stage.

The national conversation is going incredibly well. There is an enormous appetite in Scotland to contribute to it. It is important that people have the maximum opportunity to make their views known and to contribute.

We are reflecting on the success of the first phase and will report to Parliament on the next stage of the national conversation in due course.

The Convener: Can you give us any indication of when that might be?

Nicola Sturgeon: I am not in a position to give you a date today, but I can say that it will be sooner rather than later.

Iain Smith (North East Fife) (LD): Given that the Parliament last week voted clearly to reject the national conversation approach and, instead, voted for a Parliament-led process for the consideration of the constitution of Scotland, how can you justify the Government continuing to use public resources to promote something that the Parliament has rejected and which the Government has not asked the Parliament to endorse?

Nicola Sturgeon: The difference between me and Iain Smith is that I believe that it is up to the people of Scotland to decide the constitutional future of our country. Parliament was absolutely entitled to vote in the way that it did last week, but I think that it is regrettable that the main Opposition parties came together to try to restrict the nature of the debate by purposefully and deliberately excluding one of the main options for Scotland's constitutional future, which is not only the option that is favoured by the largest party in the Parliament but the option that is favoured by a substantial proportion of the Scottish people. However, that is a matter for the three main Opposition parties. It is now for Parliament to determine how to take forward the resolution that was voted on last week. As I said, given the intentionally restricted nature of the commission, it cannot replace a wide-ranging conversation that enables discussion of all the options, but I welcome the contribution that the commission—should it develop—can make to the national conversation.

As we set out clearly in "Choosing Scotland's Future", we are open-minded about the prospect of a multi-option referendum. However, if there is to be such a referendum, those who propose an alternative to independence have an obligation to define that alternative. If the commission can help in that process, that will be welcome.

I hope that we agree that it is perfectly legitimate for members of the Parliament to hold different views. Every single one of those views is legitimate in its own right and everyone has a perfect right to express their own view. There is nothing wrong with the fact that Iain Smith and I hold different views. However, I hope that we can agree that the people who have the right to determine between those views are not any of us or even the parties that we represent, but the people of Scotland, in a democratic referendum.

10:15

Iain Smith: You refer to a democratic referendum. The ballot box in elections is the fundamental aspect of democracy in the United Kingdom and Scotland. In May, people clearly voted against having a referendum on independence, as they voted two to one against the party that supported having such a referendum. The Scottish National Party may be the largest party in the Parliament, but its members are by no means in a majority—they are very much in a minority.

Last week, elected representatives who represent the other two thirds of the voters voted clearly on behalf of their electors to reject the Government's approach. At what point will the Government listen to elected members, agree to

the democratic views of the Scottish people as expressed through the ballot box and accept that its national conversation is not the way in which the elected Parliament of the people of Scotland wants to proceed? When will it accept that we should seek a parliamentary approach to the issue and not an approach that is led by a minority Government?

The Government has clearly stated on its national conversation website that

"The overall aim of the Government is to gather support for a referendum in the course of this Parliament."

Its aim is not to have a debate but simply to gather support for a referendum.

Nicola Sturgeon: The debate on Scotland's constitutional future will continue despite Iain Smith's obvious irritation. The people of Scotland will not be prepared to let those who do not like or support the legitimate cause of independence to impose limits on that discussion.

It is more than passing strange that a representative of the Liberal party, which supports referenda on almost every other constitutional issue, finds it so objectionable that the people of Scotland should be given the right to determine their constitutional future. The SNP will continue to argue the case for independence as a party and as a Government. That is its democratic right. Iain Smith is perfectly entitled to argue against the case that we make, but the most pertinent question is not what option anyone around this table proposes or supports—the fundamental and most pertinent question is: who has the right to decide? No one around this table does; rather, the people of Scotland have the right to decide. Given that people vote on a variety of issues in elections, the proper way to decide Scotland's constitutional future is by holding a referendum. Holding a referendum is often the proper way to decide a constitutional issue. If people such as Iain Smith are so confident that Scotland will reject independence, I cannot for the life of me think what they have to fear from a referendum that puts the question of independence to the test.

Gil Paterson (West of Scotland) (SNP): Some people have argued that establishing a constitutional commission is a spoiling tactic. From what you have said, I take it that the Government does not see things in that way and that it has a different view of the matter.

Nicola Sturgeon: It is not for me to speculate on the motives of those who proposed and voted in favour of the motion that was debated last week, but Gil Paterson might be right. They may have been motivated more by the desire to adopt spoiling tactics rather than by the desire to make a constructive contribution. Nevertheless, the constitutional commission can make a

contribution, despite what the motives of those people might have been. It cannot replace the national conversation because it seeks to exclude one of the main options for our country's constitutional future, but if it gives the Opposition parties that now accept that the status quo is not an option—I am pleased that they accept that, albeit that they do not support independence—the option to define better what on earth they are talking about in a way that will enable that to be put to the vote in a democratic referendum, I am sure that it will make a positive contribution.

Irene Oldfather (Cunninghame South) (Lab): When will the referendum take place?

Nicola Sturgeon: The Government made it clear before the election and it has made it clear since that we intend to have a referendum by 2010.

Irene Oldfather: I subscribe to Iain Smith's view that we had a verdict on independence from the Scottish people in May. However, if the minister is so confident, why should a referendum not be held now? Why should we wait until 2010?

Nicola Sturgeon: We made it clear in the election campaign—I remind members that we won the election—that we wanted to have a referendum in 2010 for several reasons. We made it clear that the SNP wanted to build its credibility and reputation in government, and we are doing a very good job of that now, thank you very much.

It is important to allow the national conversation to proceed because the views that are expressed through it will impact on the range and precise wording of questions that could be put in a referendum. We have made it clear that we are open to a multi-option referendum, so it is only fair that we give the parties and interests in Scotland who want an option on the ballot paper other than the status quo and independence time to put that option together.

Irene Oldfather: So the date is 2010.

Nicola Sturgeon: I am not sure what part of my original answer you did not understand. It is the Government's intention to have a referendum in 2010. The question for the non-Government parties represented on the committee is whether they will vote for a referendum to give the people of Scotland the chance to decide their own constitutional future.

Irene Oldfather: Will there be one referendum or two?

Nicola Sturgeon: We plan to have one referendum. Of course, whether we have that referendum will depend on whether the other parties represented in the Parliament are prepared to give the people of Scotland the democratic right

to choose or whether they want to take that decision away from them.

Irene Oldfather: And the referendum would be on the principle of independence.

Nicola Sturgeon: As politely as I can, I suggest to Irene Oldfather that, as well as asking questions, she listens to my answers. I have already said that we are prepared to consider a multi-option referendum that would test the opinion of the people of Scotland on their support for the status quo, for independence or for more powers for the Scottish Parliament. However, before that third option could be placed on a ballot paper, it would have to be better defined. I argue that the obligation to define it rests on those who put forward that argument.

Irene Oldfather: The white paper rejects the idea of a second referendum on the detail. The first referendum would be on the principle of negotiating; why would you reject a second one on the detail?

Nicola Sturgeon: Our view is that a second referendum is not required. If you want to make a submission to the national conversation to argue for a different position, we would be happy to receive it. However, our position is very clear.

Irene Oldfather: So, with reference to Iain Smith's earlier line of questioning, it is okay for the Parliament rather than the Scottish people to decide on the detail, but only the people will have a say on the principle. That seems a converse argument.

Nicola Sturgeon: The member may be confused, but I think that most reasonable people would think that the position is perfectly clear. The Scottish people should have the right to determine the constitutional future that they want, and the way to do that is through a referendum. The Government's position is that a single referendum is appropriate and that there would be no need for a second referendum. If any member wants to argue a contrary case, they are welcome to make a submission to the national conversation.

Irene Oldfather: It is not just any member. Is the cabinet secretary aware of the position of University College London's constitution unit, which argues that the SNP's reasoning for not having a second referendum on the detail is extremely weak and inconsistent with what has happened in other areas?

Nicola Sturgeon: I am aware that there are a range of views, and I am happy to consider them. It is interesting to note that the process that led to the establishment of this Parliament involved a single referendum. We have a clear precedent that the member, and anyone else whose views she wants to quote, would do well to reflect on.

Irene Oldfather: I do not think that your party subscribed to that process.

Nicola Sturgeon: You do not think my party subscribed to it, but I remember campaigning enthusiastically for a yes-yes vote in the referendum.

The Convener: The only point that I would make is that there was a detailed proposal in the referendum in 1997. Is the analogy not with a potential second referendum rather than with a single referendum on the principle?

Nicola Sturgeon: I do not agree—I think that the analogy is perfectly appropriate. However, I repeat that I am stating the views of the Government and my party, and it is open to any member to put forward their own views in a submission to the national conversation. That is how open and inclusive it is.

The Convener: I call Alex Neil.

Alex Neil (Central Scotland) (SNP): I want to ask a couple questions—

Nicola Sturgeon: Sorry, convener, but I do not think that Irene Oldfather has finished her questions.

The Convener: Have you not finished yet, Irene? Sorry.

Irene Oldfather: I was just thinking that the constitutional convention springs to mind.

Nicola Sturgeon: Does it? That is nice.

Alex Neil: I will finish off that point before going on to a more substantive one. Is it not better for the reputation of government that a Government that was elected on a commitment to hold an independence referendum intends to keep that promise than that a Government in London that was elected on the back of a promise to have a referendum on the European constitution now refuses to hold it?

Nicola Sturgeon: That is a fair point. As Alex Neil knows, this Government intends to keep all its promises to the Scottish people. One of those commitments was a referendum in 2010. That is a commitment that we want to keep—of course, it depends on support from other parties in the Parliament. The position of the UK Government on the referendum on the European Union constitution has been, and continues to be, all over the place.

Alex Neil: I might wish to come back in later, but I have one further question for the moment. In the debate last Thursday morning, Wendy Alexander questioned the legality of the bill as outlined in the white paper. No doubt she is an expert on what is legal and what is not. I presume that the Scottish Government's legal opinion is that a bill with the

wording that is outlined in the white paper is entirely legal and constitutional.

Nicola Sturgeon: As Alex Neil is aware, it is the practice of Government—as it was of our predecessor Governments—not to confirm either the fact or the content of legal advice, and that is a rule that I will not breach today. In my view, a referendum is within the competence of the Scottish Parliament. The wording of that referendum would have to be drawn in such a way that ensured that it was within the competence of the Scottish Parliament.

The Convener: I am coming in on the back of other people's questions, but it occurs to me that, during our previous debate on Europe, Linda Fabiani helpfully provided a legal view about the EU treaty and marine biological resources. Would it not be possible to—

Nicola Sturgeon: I have just given you my view on our position. Undoubtedly, a consultative referendum—as all referendums in the UK have been—is within the competence of the Scottish Parliament.

John Park (Mid Scotland and Fife) (Lab): I am interested in the process of engagement with the Scottish public, particularly by electronic means. Despite my youthful looks, I am always a bit sceptical about engagement using the internet, e-mails and so on, and about how reflective that is of people's views. I would like to build some confidence about the process. Did you mention 345,000 web hits?

Nicola Sturgeon: Yes.

John Park: Are those unique hits, or could it be that 10,000 people visited the website 35 times, for instance?

Nicola Sturgeon: Some people have probably visited the website more than once. I am not arguing that 345,000 individual people have visited the site—although I have no evidence that that is not the case. Given that I am perhaps more in tune with the modern age than John Park is, I understand that people tend to visit websites on more than one occasion.

Even taking that into account, our website has attracted unprecedented interest for a Government website. The national conversation continues to attract a great deal of interest, through the website and the blog, but also much more widely. The national conversation has provoked considerable debate and interest across civic Scotland, and I think that that is fantastic.

John Park: There is obviously an issue about people being able to access things on the web. What other engagement have you had with individuals? Have you had a lot of letters, phone calls and faxes? Have you entered into specific

arrangements with any groups? The previous Executive undertook a lot of one-to-one engagement that involved civil servants working with groups on the Executive's future activities and helping people to develop their thinking around issues that were coming up. Have you undertaken anything like that?

Nicola Sturgeon: In addition to the hits on the website and the downloads of the white paper, nearly 400 letters have been received. I said in my opening remarks that the first phase of the national conversation was very much about getting it established. Having a national conversation means less of a polarised debate between independence and the status quo, as it allows people to have their say. I suppose that it also establishes the principle that the status quo is not really the favoured option of very many people in Scotland.

I think that so far the national conversation has been incredibly successful. One strand of the next phase of the conversation—as I said to the convener, we will report to Parliament on the next phase in due course—will bring people more opportunities to engage directly through events. Parliament will, in due course, have the opportunity to comment on those plans and—I hope—make a contribution.

John Park: Convener, are we just looking at the process or can we go into the detail of the white paper?

The Convener: You can do that now, if you want.

John Park: I will come back to it. I will let members talk about the process first.

10:30

Alasdair Morgan (South of Scotland) (SNP): I have a question on the business of a referendum. The minister generously outlined how the Government might be prepared to consider a multi-option referendum. However, one of those other options—the extension of the powers of the Parliament—was agreed by the Scottish people in the previous referendum. It was built into the 1997 white paper and into the Scotland Act 1998 that things can be moved out of the reserved powers schedule. That has already been agreed, and one wonders why we would need a referendum to agree something that has already been agreed in a referendum.

The only other option that I can think of that we might put into a referendum is the Liberal option of federalism, which is not something that Scotland could decide on its own anyway. We would have to ask the potential federal partners—whoever they may be—whether they wanted it as well.

Is there not an argument that the only thing that has not already been decided by referendum and that it is in Scotland's power to decide on its own is independence?

Nicola Sturgeon: There is a strong argument for that; however, there is also a democratic argument to counterbalance it. The Parliament was established by democratic referendum. Technically, more powers can be added to those that the Parliament already has by amending the Scotland Act 1998. That would be a reasonable way to proceed in the case of relatively minor powers. However, if we are talking about substantial additions to the powers of the Parliament, given the fact that it was created by democratic referendum, the right way in which to determine the issue would be by democratic referendum.

It would be important that the people of Scotland had the opportunity to consider the range of powers that were proposed, whether they were adequate and, perhaps, the motivations of those who proposed them. I listened to David Cameron yesterday. It is very clear that, when he talks about changing the funding arrangements for the Scottish Parliament, he is talking about cutting the funding for the Scottish Parliament. There is a strong argument for ensuring that we can shine a light on such issues.

I repeat what I said earlier: the Government is open-minded on the matter. However, a key principle to which I hope everyone can sign up, regardless of their views on what the best constitutional option is, is that it is for the people of Scotland to decide. It is not for the SNP, Labour, the Liberals or the Tories to decide; it is for the people of Scotland to decide. I cannot for the life of me see what anybody has to fear or object to in that principle.

Alasdair Morgan: I just make the comment that that is a fairly generous view, given the fact that any referendum that has been held by any UK Government so far has presented the proposition on a take-it-or-leave-it basis.

Nicola Sturgeon: Whether there is a third option in a referendum depends very much on those who propose that as the best option. If they can define it in such a way that it can be put on the ballot paper, so be it. In the interests of democracy, we would be almost duty bound to allow the people of Scotland to have that as an option. However, if those who advocated that third option could not get their act together to define it, the referendum would perhaps be as we previously thought—a straight choice between the status quo and independence.

The Convener: Lots of members want to come back in. That is the end of round one, as it were. I

will let everyone come in a second time after Jackie Baillie has asked her questions.

Jackie Baillie (Dumbarton) (Lab): I am happy to wait until committee members have had their shot.

Irene Oldfather: Can the minister say whether it will be the end of the matter if the Scottish people firmly reject independence?

Nicola Sturgeon: The SNP will not stop supporting independence. We have a right to support it because we think that it is the best future for the people of Scotland. However, the First Minister is on the record as saying that a referendum is a once-in-a-generation opportunity, which is a view that most people accept.

Irene Oldfather: So we would not be in Quebec's situation of having a referendum every five or 10 years.

Nicola Sturgeon: That is unlikely. It is a once-in-a-generation opportunity. It is not for me to speak for people in Quebec; it is for each country—

Irene Oldfather: I am just—

Nicola Sturgeon: I have stated it clearly. I am sorry if—

Irene Oldfather: Once in a generation. Thank you.

Alex Neil: The Welsh Assembly Government, led by Rhodri Morgan, has committed itself to the principle of a referendum. Is it not ironic that, in Wales, the Labour Party in government commits itself to consulting the people through a referendum and, in Scotland, it is dead against it?

Nicola Sturgeon: Life is full of rich ironies, and that is certainly another one. I am at risk of repeating myself, but it is perfectly legitimate for us all to have different views on what is best for Scotland's future. That is democracy and it is reasonable. I do not agree with the other views that are expressed, but I absolutely respect them and the right of those who argue them to do so. However, the point of principle around which we should all be able to unite is that the people of Scotland are the ones who have the right to decide. The best way—the only way—to determine those issues is by referendum. That is a simple point of principle and, no matter how hard I try, I do not understand why people object to it, particularly people who were full in their support of a referendum to establish the Parliament.

Gil Paterson: I have two points. The first concerns a point that Irene Oldfather raised. My father was a great trade unionist and it is from that background that I consider myself a socialist. The idea that workers and trade unionists should give up a right because a parliamentary motion

defeated it in some way is absurd. Workers' rights are workers' rights. Therefore, the argument that the SNP should give up its right to argue for independence just because folk do not vote for it at a given time is also absurd. Do you have any observations on that?

I am interested in engagement. I am showing my age, because high technology for me is switching a light bulb on, so engaging through modern means is not my thing.

Nicola Sturgeon: You have come on a bit.

Gil Paterson: A bit, aye—I can click twice now.

We need to engage with people who are not focused on the internet, not only to find out what their views are, but because public meetings are the best way to develop an argument and work out a rounded way of coming to a conclusion. That is the best method of all. The campaign that unfolded for the referendum that set up the Parliament brought many folk into the debate and developed in such a way that it was unstoppable. I encourage you to get roadshows under way as soon as possible so that we can engage that part of Scottish society that does not click into the internet.

Nicola Sturgeon: I do not deny that we are a parliamentary democracy but, not only in Scotland but throughout the UK, we have established through precedent over the past number of years that certain issues—constitutional issues in particular—should be decided by referendum. That applies to Scotland's future as well.

I have already said that events, roadshows and public meetings will be a key feature of the national conversation's next phase to broaden the opportunities for people to contribute. It is important that people are given the best possible opportunity to contribute and, if the success of the first stage is anything to go by, the next one will be even more successful.

You mentioned trade unions. It is interesting that, of the supportive contributions that have already been made to the national conversation, one is from Unison, which welcomed the inclusive, wide-ranging nature of the debate. That is welcome indeed.

John Park: I will go into specifics and my question is about a subject that interests Nicola Sturgeon. The white paper talks a bit about Scotland developing

"its own voice, and its own distinctive contribution, in the area of defence."

That probably refers to the shape of the army and the navy, but you will know that Scottish naval yards and dockyards depend on huge contracts from the UK Government. Have you considered

what not being part of the UK might mean for those yards? What might that mean for the likes of Faslane, Rosyth and the two yards on the Clyde?

Nicola Sturgeon: I hoped that we had moved beyond the scaremongering of the Scottish election campaign. I will take Govan shipyard in my constituency as an example. BAE Systems wins contracts because of the skill and aptitude of that yard's workforce and not because Scotland is a member of the United Kingdom. I have always thought and continue to think that it is an insult to the people who work in those industries to suggest that they would somehow be incapable of continuing to flourish if our country's constitutional position changed.

Defence and a range of issues that the national conversation touches on are policy matters. I can speak for my party's policy, but a range of views is held on specific issues, just as on the best option for Scotland's constitutional future. To debate all those issues is legitimate.

John Park: I acknowledge what you say. I have been part of a workforce that has had to become able to compete in a UK defence market, but it is important to recognise that those contracts are allocated together to UK yards and do not undergo a competitive tendering process.

Nicola Sturgeon: The defence contracts that you talk about are allocated to BAE.

John Park: No—they are allocated to the alliance.

Nicola Sturgeon: They are allocated to BAE and other companies in the alliance, which allocates the work to yards. It is a simple fact that the shipbuilding contracts could not be delivered without the contribution of Govan and Scotstoun shipyards.

John Park: Absolutely.

Nicola Sturgeon: That is an important point to make.

The debates are legitimate. I say simply that, whatever their views are on Scotland's constitutional future, people in Scotland decisively rejected the scaremongering about independence that we heard during the Scottish election campaign. I hope that all members have moved on to a more mature approach than that.

John Park: I agree with you and that is why I am interested in the work that the Scottish Affairs Committee is doing on the impact of defence jobs on Scotland. Will the Scottish Government engage with that work and note that committee's report, which will be sober and the result of a correct process?

Nicola Sturgeon: Of course. If the select committee invites the Scottish Government to

contribute, I am sure that we will be more than happy to do so.

Iain Smith: We have heard comments about democratic accountability and a referendum. Our party—the Liberal Democrats—did not support in 1997 a referendum on establishing the Scottish Parliament, because we believed that the Scottish people's will for the Scottish Constitutional Convention's recommendations had been established by the democratic vote in the 1997 general election.

No referendum has been held in the United Kingdom unless democratically elected representatives—MPs or MSPs—have supported it. We are now being asked to have a referendum when only a minority of MSPs support the proposition, which is not a democratic process in any democratic system.

I would like clarification about the legality of a referendum. Nicola Sturgeon said that the position was clear and that holding a referendum would be legal, but the paper says:

"The competence of the Scottish Parliament to legislate for a referendum would depend on the precise proposition in the referendum Bill, or any adjustments made to the competence of the Parliament before the Bill is introduced."

Gil Paterson: That is what Nicola Sturgeon said.

Iain Smith: That is not what she said.

Nicola Sturgeon: It is what I said.

Iain Smith: Do you think that the draft referendum (Scotland) bill in the white paper would be within the Scottish Parliament's competence? Do you have clear legal advice on that?

Nicola Sturgeon: On Iain Smith's first point, I stand corrected—we have identified an example of Liberal Democrat consistency. I still think that the Liberal Democrats' position on a referendum is wrong and that, whatever the arguments were before the referendum to establish this place was held, as the Parliament was established by democratic referendum, any changes should be made by democratic referendum. That is a point of principle that we can continue to debate. I will continue to struggle to understand the logic of Iain Smith's position.

On the issue of the competence of the referendum, in my view the draft referendum is within the legislative competence of the Scottish Parliament. If Iain Smith had been listening earlier, he would have heard me say that the referendum would of course require to be worded to ensure that it was within the legislative competence of the Parliament. If the legislative competence of the Parliament remains as it is, it will have to be within that. The other quote that Iain Smith read out was

simply speculation that if the Parliament's legislative competence had changed in the intervening period, that would have to be taken into account as well.

10:45

Iain Smith: I want to be perfectly clear. You are saying that, in your opinion, the referendum is within the legislative competence of the Parliament. I am asking whether that is the legal advice that you have had from the Scottish Executive. It is an important point.

Nicola Sturgeon: I accept that it is an important point, but Iain Smith was—albeit for a rather brief period—a minister in the previous Administration, and he knows very well that it is a feature of the Scottish ministerial code that the fact and the content of legal advice should not be commented upon. What I am saying to him is that it is my view and that of the Government that a referendum is within the legislative competence of the Scottish Parliament. I cannot put it any more clearly than that.

The Convener: This is the European and External Relations Committee, so perhaps it is appropriate that I should refer to the first sentence on page 23 of the white paper, which says:

"An independent Scotland would continue in the European Union and bear the burdens and fulfil the responsibilities of membership."

I will ask you about a couple of aspects of that, the first of which is how you see the process issue working out. I do not know whether you have any legal advice on that. The second is more to do with your general position on the European Union, given what the Government has been saying about the common fisheries policy. Some have suggested that the logic of your position on that is to withdraw from the CFP and therefore the EU. Will you comment on that sentence?

Nicola Sturgeon: I will take that question in its two parts. First, it is the clear view of the Scottish National Party and the Government that Scotland would automatically be a member of the European Union upon independence. There is legal opinion to back that up. I do not think that the legal position is in any doubt. The political position is, arguably, clearer still. In an era in which the European Union is expanding, the idea that some members have bandied around in the past that Scotland would be cast out is incredible and does not bear sensible scrutiny. Scotland would automatically be a member of the European Union.

On the second part of your question, the SNP is enthusiastically pro-Europe. We always have been—certainly in modern times—and we will continue to be so. That does not mean that we are

uncritical of everything that emanates from the European Union. We have made no bones about the fact that we are not overly fond of the common fisheries policy and that we have severe difficulties with the aspect of the proposed European constitution treaty—whatever you want to call it—that would enshrine exclusive competence over fisheries. We have made that position abundantly clear.

Irene Oldfather: The minister said that Scotland would automatically become a member of the European Union.

Nicola Sturgeon: Indeed I did.

Irene Oldfather: You would not require to renegotiate.

Nicola Sturgeon: No.

Irene Oldfather: The minister thinks that other member states would just stand back and that, despite the financial and administrative changes involved, a process of renegotiation would not be required. Setting aside the legal argument, in relation to the political argument there could be no automatic right of application.

Nicola Sturgeon: Despite what is perhaps the wishful thinking of the member, the legal and political arguments back up the view that I have expressed.

Irene Oldfather: Do not all member states require to negotiate? What makes Scotland different?

Nicola Sturgeon: In order to join the European Union for the first time, there is a process of negotiation—

Irene Oldfather: So it is not automatic.

Nicola Sturgeon: I was about to make a distinction between countries joining the European Union for the first time—a category to which Scotland does not belong—and Scotland, which is currently a member of the European Union and would continue to be a member upon independence. That is very clear, and—as I am sure the member, with her interest in European matters, is well aware—it is backed up by a considerable weight of legal opinion.

Irene Oldfather: I am aware of the weight of legal opinion on the issue, but I am asking about the political situation. The United Kingdom is a member state of the European Union. Scotland is not, so it would not have an automatic right to join. The matter would have to be renegotiated.

Nicola Sturgeon: I did my honours degree in international law. I do not remember all that I learned and am a bit rusty, but I remember the law of the successor states, which would clearly apply in this case. Scotland would assume the rights and

responsibilities of the UK, which would include automatic membership of the European Union. The overwhelming weight of legal opinion backs up that view.

If anything, the politics of the matter are even stronger than the legal issues. The European Union has expanded considerably in recent years. I cannot find credible the argument that the European Union would not enthusiastically want to have oil-rich Scotland as a member. Members of the Parliament who make that argument are engaging more in wishful thinking than in an argument based on fact.

Irene Oldfather: My problem is with the word “automatic”. There would need to be a renegotiation process in relation to the financial and administrative issues.

Nicola Sturgeon: With the greatest respect to the member, that is her view—a view with which I profoundly disagree.

Alex Neil: I want to reinforce that point. Is it not the case that successive secretaries general of the European Commission, from Professor Emile Noël right through to the previous Irish secretary general—the top civil servants, who have no axe to grind—have stated categorically that the position that you have just outlined is the legal and political position on the governance of the European Union?

Nicola Sturgeon: That is absolutely the case. I have referred to the weight of legal opinion and to the overwhelming political reality of the situation. I accept that many members of the Parliament do not support independence and I respect their right to hold that view. However, I always find it hard to fathom and to get my head around the position of those who seem to wish Scotland ill, if it chooses the option of independence, and who seem to take pleasure in predicting that we would be cast out and that all sorts of dreadful things would happen. I hope that, if Scotland chooses independence, all members of the Parliament will accept that it has the right to do so.

Alex Neil: The other obvious point to underline is that, when Scotland votes to be independent, it will have the same constitutional relationship with the European Union as the rest of the United Kingdom, which will also automatically remain a member of the Union.

Nicola Sturgeon: Indeed.

Irene Oldfather: My point relates to the word “automatic”. There would need to be a vote in the Council of Ministers.

Nicola Sturgeon: Point me to the rule in any of the treaties of the European Union that says that.

Irene Oldfather: Every country that has joined

the European Union has been subject to a vote in the Council of Ministers.

Nicola Sturgeon: Irene Oldfather seems to miss the point that we are already in the European Union. There is no provision in any of the Union's treaties to expel a member from it. I challenge Irene Oldfather to point me to the provision that backs up what she is saying.

Irene Oldfather: The United Kingdom is a member of the European Union. As such, it has certain financial and administrative agreements within the Union.

Alex Neil: We will inherit those.

Irene Oldfather: Scotland would be in a different position.

Nicola Sturgeon: How?

The Convener: One at a time, please.

Irene Oldfather: There would need to be a renegotiation in the Council of Ministers. It may well be that 27 countries would agree to Scotland's becoming a member, but the matter would have to go to the Council of Ministers.

Nicola Sturgeon: Irene Oldfather is plainly wrong. How the UK's existing obligations to Europe were allocated between Scotland and the remainder of the United Kingdom would be a matter for negotiation between Scotland and the remainder of the United Kingdom, in the negotiations on independence. However, Irene Oldfather is simply wrong about our position in Europe. I note for the record that she has been unable to point to a single provision in any of the European Union treaties that backs up what she is saying.

The Convener: We need to move on from this issue. Alasdair Morgan has spoken only once, so he may ask a brief question.

Alasdair Morgan: I will be brief. On the political point that Nicola Sturgeon has made, is it not a fact that, once the United Kingdom ceased to exist and Scotland became an independent member state—as would England, or whatever the part of the UK south of the border was called—the minister or whoever it was at the first meeting would be queuing up to shake the hand of the representative from Scotland? Whether they would be rushing forward quite so quickly to shake the hand of Gordon Brown or David Cameron is perhaps doubtful, but they would do that anyway because of the realpolitik of the situation.

Nicola Sturgeon: The member puts it extremely well. I will not take up more time in repeating what he has said.

The Convener: It is time to move on to Jackie Baillie, who has been sitting patiently for the duration.

Jackie Baillie: I have been enjoying the debate, convener.

I want to pursue the point on the European Union, which is an important one. Nowhere in the Government's white paper can I find the assertion that entry to the EU is automatic, although I am willing to have it pointed out to me. Indeed, paragraph 3.18 of the white paper states:

"Negotiations would also be required concerning the terms of Scotland's (and the rest of the United Kingdom's) continuing membership of the European Union".

Do you accept that, as paragraph 3.18 says, a degree of negotiation would be required?

Nicola Sturgeon: I have just made clear what we are referring to in that paragraph. Of course, negotiations would be required between Scotland and the rest of the UK, as part of the overall independence negotiations, about the allocations of the various responsibilities and obligations. I repeat—and I challenge anybody to provide evidence to overturn this argument—that Scotland's membership of the European Union would be automatic on our achieving independence. Why? Because we are already members of the European Union.

Jackie Baillie: Paragraph 3.18 acknowledges—

Nicola Sturgeon: I have just explained what that means.

Jackie Baillie:—that you would have to negotiate with international bodies as well. There is an acceptance that we would be in uncertain territory. Although you may wish membership of the EU to be automatic, and others would agree that that is critical, that may not necessarily be the case. There is an element of doubt.

Nicola Sturgeon: There is no doubt in my mind. I cannot speak for other members, but there is no doubt about that in my mind. I do not think that there is any legitimate doubt around the question of Scotland's continuing membership of the European Union, and I cannot help but conclude that those who want to cast doubt on that position are simply trying to make political arguments.

Jackie Baillie: I hasten to assure you that I am not seeking to make political arguments. The issue is the need to have absolute certainty, and everybody would want the full facts to be out there.

Nicola Sturgeon: Alex Neil has just recited the long list of legal opinions that back up our position.

Irene Oldfather: It is political.

Nicola Sturgeon: Well, whether it is legal or political, the fact remains.

The Convener: One at a time, please.

Jackie Baillie: The commission is not restricted as the cabinet secretary has said but will engage in the widest possible debate. I am glad that she welcomed that, even though it was a partial welcome.

Let us return to the referendum to establish the Parliament. The cabinet secretary will accept that that was accompanied by a very detailed white paper. The draft bill sets out a question that is only about negotiating independence. There is some merit in Irene Oldfather's argument about whether two questions would be valid and important in the circumstances—one question on the principle of the proposition and another on the form and content of the proposition. By your own admission in the white paper, because of issues of competence, the question can talk only about a negotiation—and there are, arguably, differences of opinion as to whether that is competent. I note the cabinet secretary's hesitation, but there are differences of opinion. It is arguable that the scope of the reservation does not include the competence of the Scottish Government to embark on negotiations, and the opposite is equally arguable.

Cabinet secretary, you will be aware of the case of *Whaley v Watson*, from 2000. I have asked you questions about it but have failed to get a response. The judgment in that case might lead one to conclude that the bill could be challenged in the courts. I accept that you are unable to comment on the fact and content of legal advice, but I wonder whether you think that what you have put in the draft bill is adequate?

11:00

Nicola Sturgeon: The short answer to that is yes. I repeat what I have said before. A referendum is perfectly competent within the current powers of the Scottish Parliament. If it is not possible for the Scottish Parliament to consult the people of Scotland on the granting of more powers to the Parliament or independence, it is difficult to think of a greater argument for independence. My clear view is that a referendum such as that which is proposed would be within the legislative competence of the Scottish Parliament—I cannot put it any more clearly than that.

On the question whether there should be one referendum or two, I have made clear my views and those of the Government. I repeat what I said earlier. It is open to any member who wants to argue a different view to make a submission to the national conversation.

Jackie Baillie: But why have you rejected that?

Nicola Sturgeon: Rejected what?

Jackie Baillie: The possibility of asking two questions.

Nicola Sturgeon: I do not think that two questions are necessary. The SNP and the Government do not think that two questions are necessary. If other members want to argue a different view, they are perfectly free to do so.

Jackie Baillie: In order to do that, it would be helpful to understand why you have rejected the idea of asking two questions.

Nicola Sturgeon: The important principle in the referendum is to give people in Scotland the chance to choose the option that they want, to give their Government the mandate to negotiate an independence settlement. That is my clear view. It is a reasonable and sensible way in which to proceed; however, as I have said, we are interested in hearing a range of views, and people are free to submit any views that they want to.

Jackie Baillie: If all that you seek to do in the first question is establish the principle, surely, if we believe in enabling the people of Scotland to express a view, we should return to them with a question on the form and content of the settlement as well. That is exactly what we did in the referendum to establish the Parliament.

Nicola Sturgeon: I have stated my clear view. I say again that other members are perfectly free to put forward a different view, but my view and that of the party and Government that I represent is clear.

Jackie Baillie: Okay. I just do not understand your reasoning.

I have one final question. What implications does the ruling in the case of *Whaley v Watson*, from 2000, have for what you are trying to do?

Nicola Sturgeon: I have made clear my view on the legislative competence issue. Jackie Baillie might not like my answers, but she is not going to change them.

Jackie Baillie: I am just looking for more content in your answers.

Nicola Sturgeon: The proposed referendum is, in my view, within the legislative competence of the Scottish Parliament. The ruling in the case that Jackie Baillie cites does not change my view on that. I appreciate that that is not the answer that she wants because—for reasons best known to herself—she opposes giving the people of Scotland the right to choose in a referendum. Nevertheless, that is my position and I have given a clear answer.

Alasdair Morgan: Does the cabinet secretary not think it strange that members are dead against the idea of having successive referenda if the first one goes against independence but keen on having successive referenda if the first one goes in favour of independence? Does she agree that, after independence had been achieved, it would be open to any party to stand on the basis of giving up Scottish independence if it thought that it would garner some votes by doing so?

Nicola Sturgeon: I suspect that that would be unlikely to happen, as they would know that that would garner very few votes, if any. Nevertheless, the member makes some good points.

The Convener: Does anyone want to make a final comment—preferably not on the European Union?

Alex Neil: Can I just comment on the issue of the referendum? I understand that the process for a referendum would be similar to that which was followed for the referendum in 1997. We voted on the principle of establishing the Scottish Parliament and there was a separate question on whether the Parliament should have tax-raising powers. A white paper was published in advance of the referendum, which spelled out the detail. Similarly, a white paper spelling out what independence means to Scotland will be published prior to people voting. Just as in 1997, people will vote on the principle on the basis of the information contained in the white paper.

Nicola Sturgeon: The two processes are perfectly analogous. The only difference is that all members around the table supported the previous referendum whereas—for reasons known only to themselves—some do not support this one. The precedent has been well established, and it is understood and well supported.

It is important to note—members ignore this at their electoral peril—that, although there is a wide range of views about the best option for the future of Scotland, there is overwhelming public support for the principle of deciding the issue in a referendum. That support is of the order of 80 per cent or more, including majority support among the supporters of all parties.

Alex Neil: Which is slightly lower than the percentage of people who rejected the federalist party at the election in May.

Nicola Sturgeon: I do not think that we should go into the detail of the opinion polls as they apply to the federalist party. Its members would not be happy to hear about that.

Gil Paterson: A good thing about having an SNP Government is that the party has an awful lot of resources at its disposal that it did not have in the past. Can you use those resources and come

back to us to say how many countries want to give up their independence?

Nicola Sturgeon: I think that I can answer that question right now, without spending any resources—

Gil Paterson: You have already done the research.

Nicola Sturgeon: I cannot think of any country that, having won its independence, would want to give that up. I do not think that Scotland would be any different.

Jackie Baillie: It is important to be clear. People are not necessarily opposed to referenda, and attempts to suggest that they are—*[Interruption.]*

Nicola Sturgeon: Pick'n'mix referenda.

Jackie Baillie: The Parliament was created on the basis of a referendum in 1997. There is no difficulty in principle with referenda. The fundamental difference is that you would be asking for the power to negotiate, not about the final form and content of the settlement. Without the end product, the referendum would not be analogous to what happened in 1997, when the end product was set out in detail in a white paper. That is a genuine concern, on which I ask the cabinet secretary to reflect—

Nicola Sturgeon: There was a white paper in 1997 and a white paper is sitting in front of me right now. In 1997 the detail was determined and decided after the vote had been taken in principle in the referendum. What we propose is exactly the same as the process that was followed in 1997.

Jackie Baillie says that she is not opposed to referenda. It strikes me that she is opposed only to referenda in which she is frightened of the question that will be asked. I can think of no other reason why members would not be willing to test the issue through a vote of the Scottish people. If members are so confident in their assertions about independence, they will have nothing to fear.

Jackie Baillie: We invited the responsible minister to bring the debate forward, but she was not willing to do so—

Nicola Sturgeon: Will Jackie Baillie vote for it?

Jackie Baillie: It might be worth the committee's while to compare the current white paper with the one that proposed the setting up of the Parliament. The current white paper is more like a constitutional law primer. It is full of coulds and ifs and maybes, rather than assertions about what would actually happen. The argument for a second referendum is worth thinking through.

Nicola Sturgeon: I welcome the detailed scrutiny of the white paper by the committee and I very much hope that the committee will make a full

submission to the national conversation. The committee has important points to make. I look forward to receiving its submission in due course.

The Convener: We will consider what further work we will do on the matter. I want to take you back to the question on timing and format. You made it clear that you would like to hold the referendum in 2010. What implications would that have for the timing of the consultation's conclusion?

Nicola Sturgeon: We would require to introduce legislation in sufficient time to enable the referendum to take place in 2010. I repeat my challenge to the members who are challenging us to bring forward legislation quickly: will they vote for it or will they seek to deny the Scottish people the right to choose? That is perhaps the biggest question of all. The consultation will conclude in good time for the legislation to be introduced, in good time to enable a referendum to be held in 2010.

As I said much earlier in the discussion, we will report to the Parliament in due course about the enormous success of phase 1 of the consultation and our plans for the next phase. I suspect that we will do that sooner rather than later.

The Convener: We might have concerns about the timelines, not to mention other matters that have been raised. I hope that we will have a report on progress in the near future, as you indicated in your letter. In particular, I hope that you will provide further information about the nature of the consultation. We thank you for attending the meeting with your officials and hope that you agree to keep the committee updated and to attend again in person in due course.

Nicola Sturgeon: I am happy to attend as often as you like. I am happy to talk about independence for as long as you want me to do—it is always a great pleasure, and I look forward to doing it again very soon.

The Convener: I am glad that you enjoyed the experience. I am sure that we did, too. Thank you.

11:09

Meeting suspended.

11:12

On resuming—

Transposition of European Union Directives Inquiry

The Convener: Item 2 is, as members can see from the agenda, to take evidence from representatives of the Confederation of British Industry Scotland, the Scottish Food and Drink Federation and the Scottish Trades Union Congress, as part of the committee's inquiry into the transposition of European Union directives. Unfortunately due to illness, Norrie McLean from the Scottish Food and Drink Federation is unable to attend and has sent his apologies. Therefore, the committee will take evidence from Professor Russel Griggs from CBI Scotland and Stephen Boyd from the STUC at the same time rather than in two consecutive sessions. I welcome you both.

We will move straight to questions. The first is a very general question. Do the witnesses think that the transposition process that is currently followed by the Scottish Government is transparent? Does it provide for sufficient scrutiny by the Scottish Parliament?

I do not know whether Professor Griggs or Stephen Boyd will begin on that—both seem to be deferring to one another.

Stephen Boyd (Scottish Trades Union Congress): I will answer with reference to the transposition of the public sector procurement directive, which is the directive with which we have been most closely involved over the past couple of years. The directive was eventually implemented by the Scottish Parliament in February 2006.

I would not claim that the process was not transparent, given that it included a couple of public consultations, but the main problem was the timing of engagement of stakeholders, which came far too late in the process. In addition, the resources that were available to the then Scottish Executive's procurement directorate, which led on the process, did not really allow for effective consultation of stakeholders.

On the Scottish Parliament's involvement, there was a great deal of uncertainty about how the directive would be handled. At the time, I approached a number of committee conveners because, given the nature of the directive, several committees might have had an interest in it. In the end, we gave evidence to the Finance Committee in January 2006, but before that I had raised the issue with the Enterprise and Culture Committee, the Equal Opportunities Committee and the Subordinate Legislation Committee, all of which I thought might have an interest. There seemed to be a deal of uncertainty about how the directive

would be handled and which committee would lead on it.

11:15

The Finance Committee, which ended up leading on the transposition, did a very good job. We were allowed to give evidence on the directive—the Scottish Executive was allowed to do likewise—and I think that we made some progress. However, that was very late in the day. When the Finance Committee considered the transposition, it had only one meeting at which it could discuss the issue before the regulations were required by law to be implemented. The committee was not really involved at a stage in the process at which it could make an effective input into the process and suggest changes. The directive was considered far too late in the day.

The Convener: It is particularly helpful to have a concrete example of how the process played out in the previous parliamentary session.

Professor Russel Griggs (CBI Scotland): I echo Stephen Boyd in saying that the issue is about consultation and about how far in advance people are involved in the process. That applies to Europe as much as to the Scottish Parliament. Part of the challenge is that the European Commission starts to consider legislation only once it is actually formed rather than when people are just thinking about it. As Stephen Boyd pointed out, by the time such legislation arrives in the Scottish Parliament, we cannot do much about it. The issue is not just transparency but that the Scottish Government and its civil servants are required to go through a more restrictive process than is the case south of the border. I do not really have anything to add to what Stephen Boyd said. The issue is about consultation and about giving people enough time to be involved in legislation.

Alex Neil: I know that Russel Griggs is representing the CBI this morning, but he also chairs the Government's better regulation task force. From your experience of chairing the task force, would you say that the general perception these days is that most rules—in particular, those that are irritable to businesses—emanate from the European Union either directly or, in some cases, via Westminster? For example, a couple of years ago the Hansard Society estimated that as much as 60 per cent of the legislation that goes through Westminster is enacted as a result of an EU directive, regulation or whatever.

Professor Griggs: I guess I could answer that in two ways. I do not know whether most of the legislation that irritates businesses and others comes from the EU because they get irritated by taxation, VAT and all sorts of things that emanate

very much from our Government rather than from the EU—

Alex Neil: You mean the Government in London.

Professor Griggs: Indeed.

One thing that irritates businesses is the way in which legislation is transposed at Westminster. Their view, which is also shared by a number of MPs, is that we take far too rigid a view when Europe proposes changes to compliance. We immediately dive straight into legislation rather than consider alternative ways for solving problems. There are always alternatives, which might include altering current legislation, changing guidelines or all sorts of other things.

As the regulatory review group has proceeded, it has come to our notice that section 57(2) of the Scotland Act 1998 puts a greater burden on Scotland in respect of transposition of European legislation than is the case south of the border. Section 57(2) provides that we must comply with European legislation in its literal sense. From speaking to senior civil servants who have been involved in such issues, I know that that has given us less flexibility than Westminster has on how we view such matters. Because Westminster is not under the constraint of being required to comply totally as we are required to do under the Scotland Act, it can be more flexible. I am led to believe that civil servants feel that we have in a number of cases had to do things more stringently than would have been the case if they had been left alone.

Alex Neil: Will you give us—I do not necessarily mean this morning—examples?

Professor Griggs: I will give examples, but not this morning.

Alasdair Morgan: There seems to be a slight contradiction between what you said earlier and what you said just now. You seemed to argue that there was a major problem with the way in which directives are transposed, but you said earlier that the real problem is that we do not get involved early enough—before the directives or regulations are made. Which is it, or is it both?

Professor Griggs: It is both, because it is a process. A lot of European legislation starts with the European Parliament and the European Commission wanting to put legislation in place. My understanding from having attended some meetings in Brussels is that we do not get into formal consultation on European legislation until it is drafted. Rather than helping to formulate the “what?”, we do not get involved until the process is into the “how?” stage. As the legislation moves into the UK and then into Scotland, there are similar processes.

It is important that stakeholders be involved in all stages of the process, from Europe to the United Kingdom to Scotland, and that they help to formulate legislation from the beginning right through to the end of the process. It is not a contradiction; it is simply the way that the process goes.

Alasdair Morgan: Have you any feeling for the resources that getting involved earlier would require? It strikes me that it would use a substantial amount of manpower, not only at Government level but in all the other stakeholder involvement that would be required.

Professor Griggs: I am not sure that it would require a great deal of extra resource. I guess that there are more trade associations in Brussels and Europe than anywhere else and most of them get involved in the stakeholder consultation. At the meeting I attended, the view was not that they would need more resource but that, if the industry bodies—and, indeed, the employee bodies—were involved earlier in the process, it would help to form better legislation.

The Convener: Does Stephen Boyd want to answer those questions?

Stephen Boyd: I will come back on a few points, referring back to Alex Neil's question and Russel Griggs's response. I point out that I am also a member of the regulatory review group that Russel chairs.

The debate about better regulation suffers from a terrible lack of clarity. Since the Scottish Parliament was established, there has been an assumption that it is passing a huge weight of regulation that has a direct impact on business, but the evidence does not bear that out. Alex Neil's point is well made: it is clear that the bulk of the regulation that affects businesses in Scotland emanates from Brussels and London; little of it emanates directly from the institution in which we are sitting.

Russel Griggs was entirely right to talk about the need to consider alternative ways of dealing with European legislation in particular, and the need not to jump directly to legislation, as is the Government's way in the UK. The fact that the UK Government behaves that way is related to the lack of developed and durable social partnerships such as exist in other European states. When Jim Wallace undertook his reporter-led inquiry into EU directives, he visited Ireland and Denmark—two countries that have highly developed durable social partnership mechanisms that allow stakeholders to contribute across the range of public policy early in the policy-making process.

That also links to resources. I think back again to the public sector procurement directive. The STUC's comprehensive input to the consultation

on that was a huge drain on its resources. Public procurement was a key issue for us at the time, so we could justify the use of those resources, but we could not do so for each and every EU directive that comes our way.

The social partnerships in most other states encompass a range of formal and informal institutions. For instance, the Netherlands implemented the working time directive by collective sectoral agreement and did so highly effectively in the interests of businesses and workforces. However, they have the Stichting van de Arbeid—the labour foundation—which allows social partners to engage in that process with the support of the resources that such institutions provide. The fact that we do not have such institutions in Scotland is a concern. Russel Griggs will know that we have had some discussions with the regulation review group about the resources that are available to us that allow us to do our job effectively. Off the top of my head, if the group was to become more involved in the transposition of EU directives, that would be another burden, and we would have to look at the size of the secretariat and so on.

Professor Griggs: We also to have to think about the legal environment in which we work in Scotland. For example, the new pollution prevention and control permits that have been introduced in Scotland for companies that are involved in packaging and waste run to 82 pages, with appendices. The exact same permit for south of the border runs to 32 pages. It could be said that that is Scotland overcooking things, but it is not. It is about the way in which the legal system operates in Scotland. South of the border, the guidelines have legal status, so England can write a much shorter permit that refers to the guidelines because they have legal status. The guidelines do not have legal status in Scotland so they have to be included within the permit.

Stephen Boyd is right to say that the infrastructure for making legislation in Scotland is—I will use the word “literally”—different to those elsewhere, and sometimes that does not help. I am not saying that we should change the Scottish legal system, but it has an impact on the way in which we implement legislation.

John Park: We met European Commission civil servants when we visited Brussels earlier this year. They said that the UK sets a good example of transposing European regulations; we are one of the better member states at doing it. That was quite an interesting comment.

How does the CBI view what happens in other countries? When we were taking evidence earlier, the witnesses could not give, or were not prepared to give, evidence about how things are done in

other countries that would give us good examples that we could follow up.

Stephen Boyd also mentioned social partnerships and early engagement, and I support that. If we were considering early intervention in the transposition process, is it conceivable that the likes of the CBI, the STUC, the voluntary sector and other stakeholders could sit around the table with civil servants at an early stage and agree a process that would at least allow a level of social dialogue that would influence the process and the outcome? If the outcome did not satisfy those who were around the table, what would happen? That worries me a little bit because the trade union movement might take the view that the working time directive has not been applied as stringently here as it has in other countries, but the CBI might take the view that the working time directive is applied too stringently. I am interested in the panel's views on that.

Professor Griggs: Your first point is about a level playing field, and any business would have a view on that because it is about competitiveness. There is a strongly held view that regulation now affects individual businesses' competitiveness more and more. If regulations are imposed on businesses in this country that are not imposed elsewhere, and businesses are trading in the same marketplace, that will adversely affect businesses in this country.

Please do not ask me to cite them, but there is no doubt that there are specific pieces of legislation that affect our competitiveness from time to time. Indeed, at the moment, Scotland has a little bit of a positive competitive advantage because the regulation review group has removed a couple of elements from public procurement regulations that makes Scottish companies more competitive than those elsewhere. Regulation does have an impact.

I am told that there is supposed to be someone sitting in Brussels who reviews all the legislation that countries put into place to ensure that there is a level playing field, but I do not find much evidence of that.

I echo Stephen Boyd's comment about stakeholders getting more involved. The earlier we get involved, the better. It is remarkable that, in Scotland, agencies such as the Scottish Environment Protection Agency, for example, which is the main enforcer on environmental issues, do not get involved in the formulation of legislation until it is in place. For reasons I do not understand, the Government does not want to bring those agencies into the consultations early enough. If there is knowledge, we should use it, and the sooner we do it, the better.

11:30

Stephen Boyd: It does not surprise me that the European Commission looks favourably on how the UK implements legislation because its imperative is slightly different; it just wants to see the directive implemented in law. How it is implemented and who it benefits in that member state is not the EC's overarching concern.

John Park asked whether it is possible to get stakeholders together around the table. It should be. There are issues for the Government about the amount of resources that it can devote to that type of thing, and it would require extra resources at a time of a tight budget settlement. However, we should all aspire to it.

John Park also asked what would happen if we disagreed. At UK level, if the Trades Union Congress and the CBI got around the table to discuss some of the more contentious employment legislation that has been implemented during the past few years, there would be some disagreement. If that was the case, it would be for the Government to make a decision and lead on it because it must be the Government's decision at the end of the day.

In other countries where the social partnership is more highly developed, we find that when employers and unions get around the table early in the process, they come up with innovative solutions. It happens in other countries, so I see no reason why it should not happen in the UK.

Iain Smith: Obviously this part of the inquiry is about the "how?" of the transposition process; Jim Wallace looked at the "what?" and "why?". When the EU makes a directive or regulation, should the Government—in the widest sense of the UK and Scottish Executive or Government, as it now calls itself—be having a wider discussion with stakeholders to consider the options? Are we talking about primary or secondary, UK-wide or devolved legislation? Do we need legislation at all or do we just have to map EU regulations and directives against existing legislation to show that the framework is already in place? Would that be a useful way forward? If so, how could we go about effecting that change so that it would benefit businesses, trade unions and other stakeholders?

Professor Griggs: The answer all those questions is yes. The regulatory review group is about to say that regulation is about partnership between government, business and employees' organisations. Consultation is also about exactly that; it is about giving up time to be part of a process that takes things forward. There is no point in telling the Government to fix the situation if business is not also prepared to put in the time and effort to be part of the process. I agree with Stephen Boyd that we should be moving towards

a new phase in which we all participate. That will demand that we all move to a new way of working, which will mean that members of the Scottish Government and civil servants will probably have to visit businesses and get involved in order to find out the impact of what they do.

We must also be proportionate. Some time ago, a civil servant asked me to look at a new piece of European legislation on the polluter-pays principle. However, the European legislation considered the possibility of Chernobyl happening again and said that if it did, whoever caused it should pay for it. The legislation was aimed at incidents of the scale of Chernobyl, so when it got back to Scotland, a lot of pressure was applied, down to the level of what happens when a fish dies in the River Tweed. I am talking about diminishing the size and scale of the legislation—we have to be careful about how we transpose it.

In moving forward, we are talking about forming a new partnership between the Government, business and the employees' organisations, which will have to work together much more closely. In the end, that is the only way we can use our knowledge to improve the transposition process.

Stephen Boyd: The first stage in the process should be the Government examining the directive and how it can be used to achieve its aims within Scotland.

I am sorry to refer back to the public sector procurement directive all the time, but it is the one with which I am most closely involved. For the STUC, there are two imperatives when it comes to procurement: first, that as many contracts as possible remain within Scotland and secondly, that procurement be used to drive up standards throughout the economy. We saw additional scope in the directive for contracting to take into account employment and social and environmental issues. The imperative for the civil servants who were handling the transposition process at the time was to minimise business burdens, so the directive was implemented minimally. I argue that that was detrimental to business in the long term. If we had considered the social, environmental and employment concerns and tightened up that aspect of the directive, it could only have benefited Scotland-based companies. What was lacking from the process was early consideration by the Government about what could be achieved through the directive. If it had had a wee think about that, it could have had stakeholders in to chat about how we could all have worked together to achieve those aims.

Professor Griggs: George Mathewson recently gave evidence to the Economy, Energy and Tourism Committee and one of the issues he considered was employment legislation—he thinks that employment legislation is too stringent. I

guess that at one end you could have something that is totally for the employee, and at the other you could have something that is totally for the employer. Stephen Boyd is right—the answer is to achieve a balance that both parties are happy about. The current process, which does not involve everybody sitting round the table, has led to some areas of employment legislation that do not show common sense. Previously, if you had an issue with a member of staff, you might have had a quiet word with them, or have gone down the pub and had a drink with them and sorted it out. You cannot do that now—lawyers will tell you not to do it because it infringes the law. That impacts on what business—and the employee—can do. We have to apply some common sense.

Iain Smith: What I want to say follows on from what you have both been saying, because you are coming from slightly different perspectives. It is a kind of straight banana question. The complaint that the UK gold-plates regulations keeps coming up. Stephen Boyd's written evidence is fairly clear that the STUC holds an opposite view in respect of the public procurement regulation, and that the gold-plating was stripped off the employee protection aspects of the regulation. Is the UK—or Scotland—guilty of overregulating in order to implement EU legislation in general? Are there any examples of that?

Stephen Boyd: The public sector procurement directive was gold-plated, in that it was implemented differently in Scotland. The two ways in which it was gold-plated were both in the interests of business. I should say that I supported both because they allowed small and medium-sized enterprises additional flexibility to tender for contracts and so on. That is not a problem.

A year ago, I attended in Brussels a hearing on the single market, which included representatives from all member states, all of whom were on about gold-plating. Business organisations in all states struggle to identify clear instances of gold plating. There have been two fairly major inquiries—Lord Davidson at UK level and Jim Wallace's reporter-led inquiry at Scotland level. In the end, neither identified gold-plating as being a real concern.

Professor Griggs: I go back to my earlier point that what we call gold-plating is perhaps the process that we use in the UK, in which we jump to legislation first rather than consider all the other options we have to hand. I was about to say that it is because of the political process, but I do not think it is. I think that it is just the government process, which has developed over time at Westminster, that is responsible. A lot of that has been transferred up to Holyrood.

However, there is an issue about gold-plating. In fact, in the previous Administration in Scotland, I think it was Ross Finnie who, when he

implemented a new agricultural law, said unashamedly that he was going to gold-plate it because he thought that doing so would add benefit. Stephen Boyd may disagree with me, but as long as we know that we are gold-plating something, why we are doing it and whether it will give benefit, at least we can discuss it. If it is just done for the sake of it, it does not stand any discussion.

John Park: I want to go back to the point you made about Sir George Mathewson. You said that you think that there is now a lack opportunity to have a quiet word in people's ears. In one of my previous jobs, before I came to the Parliament, I worked at a senior level in human resources. I worked for a fairly big company, but employment legislation was not really on the radar: we had to go through a process and do what we had to do, but that did not stop people managing. I am now an employer and there are things that I have to adhere to, in which I am supported by the Parliament's staff, but that does not stop me managing situations. It is important to get that on the record.

The debate about employment legislation needs to be demystified. We need to identify what pieces of employment legislation are problematic. In questioning individuals and the likes of CBI Scotland, we do not always get clarity on that. Since I was elected in May, I have spoken to businesses throughout the area that I represent and I cannot recall the issue of red tape being raised with me once. People have concerns about the shape of enterprise networks, skills shortages, contracts that they may or may not win and their engagement with the public sector. Those are the predominant issues. Where does employment legislation rate in the priorities of the likes of CBI Scotland?

Professor Griggs: Employment legislation is just one of a host of things that CBI Scotland has issues around, if I can put it in that way. I can think of three situations in the past four years, in companies that I sit on the boards of, in which legal advice has taken us in a direction in which common sense would not have taken us. It depends on the individual case. I suppose that I will have to be careful how I say this, but having lawyers involved in employment legislation is perhaps not as helpful as it could be, sometimes. That is something that we may have to think about.

Red tape comes up all the time and was cited in the latest survey by the Federation of Small Businesses. However, what Stephen Boyd said is correct; when we ask businesses to be specific about the problem, they find that difficult. That is one of the things that the regulatory review group has been looking at.

Going back to the question that Alex Neil asked some time ago, all we are trying to do is put in place an engine within the Scottish Government. If it runs that engine properly, it will get better regulation out of the other end—better regulation may well mean lighter regulation—and it will find the right balance between what we are trying to achieve and how to achieve it.

Going back to the “how?” point, one of the things that Governments in all places do not do is go back, when legislation comes to fruition, and ask whether what they have got matches what they were trying to do—whether it improves the environment or whether it stops them doing things. All too often, for all sorts of perhaps good reasons, legislation drifts away from where the “what?” is.

John Park: Do you have any examples of that?

Professor Griggs: I have some, from the environmental area, that I will send to you. A number of environmental companies now think that some of the legislation that is being passed to help the environment does not help the environment but impacts negatively on it. I will happily send you some examples of that.

Gil Paterson: I have a question on regulation. The industry in which I worked has undergone a revolution involving the process, the materials, the equipment and lots and lots of money. My competition was only UK-wide—I did not compete with businesses in other countries—but I am interested in what you said about the possible impact of competition. We implemented the new directives at enormous cost, and we felt frustrated when we met our counterparts abroad who did not implement them at all—they just left them lying because their Governments did not push them. I am talking about health and safety, the protection of workers, releases into the environment and other serious, heavy issues.

Frustration builds up among businesses and workers when directives are not enforced in other countries. Should the Scottish Government and the UK Government focus on the policing of EU directives, first, so that the populations of other countries benefit from them and, secondly, as a matter of fairness?

11:45

Stephen Boyd: I am happy to make some observations. I have heard such arguments on many occasions, and I am curious to know which of our competitor nations of the original 15 EU member states have less stringent health and safety and environmental safeguards than we have in the UK. I do not know of any; in fact, the situation is often the other way around, and their safeguards are far more comprehensive.

We need to get back to the debate about creating better regulations. Russel Griggs and I have been discussing the issue for a number of years and have an agreed approach. Interestingly, the approach that he and I favour was pretty much at odds with the manifesto commitments of all the parties, which focused on arbitrary numerical targets. We see that as a diversion that will lead to a huge misallocation of Government resources.

We must get back to creating better regulation through early, effective consultation with stakeholders. That is the mantra, and it trips easily off the tongue, but making it happen is difficult. It is demanding for Government and stakeholders, but it is how we will get better outcomes.

Professor Griggs: I agree that the issue is perhaps not the type of legislation that exists in other countries but how it is policed and implemented. In France, in the 1990s, when there were wars throughout Europe about the testing of pieces of electrical equipment, they placed a test house about 70 miles away from the nearest point, so people did not do it. There are ways of getting around the legislation.

Stephen Boyd makes the point that, when we start to investigate the matter, it is difficult. As I keep saying, there is supposed to be somebody in Brussels who is policing the regulations to ensure that there is a level playing field throughout Europe. If they are not doing their job properly, the Scottish Government and the UK Government should say something to them.

Like Stephen Boyd, I go to Brussels occasionally. There is a unit in Brussels that is supposed to ensure that, when each European law is translated into the language of a country, it keeps its essence. Unfortunately, all they do is check the English. It is not colloquial language, and a lot of things are lost in translation. A lot more could be done at that stage in the process to ensure that the regulation is policed well and transposed well throughout Europe.

As we have gone through the process, we have come across a number of issues. For example, reading an 82-page permit that is written in very technical language is different from reading a 32-page permit that is written in layman's terms, but that is how our infrastructure allows us to do things. It takes the management of a company a lot more time and effort to read a long technical permit, and that is a competitiveness issue because if they are doing that, they are not doing other things to benefit their business. Such things impact on the amount of work that a business can do in a day.

Stephen Boyd: A lot of in-depth international comparative work has been done on regulation by the Organisation for Economic Co-operation and

Development, the World Bank, the World Economic Forum and others. All of that work, without exception, shows that the UK performs very well in terms of the lightness of regulation. That is a worrying conclusion for a trade unionist, in some respects, but it is the conclusion across the board. Seeking to compete on the basis of Scotland's being less regulated than other countries in key areas is not the way in which we want to go, although that does not preclude the continuing discussion about the need to create better, more effective regulation that has to take place.

Gil Paterson: For the record, I will cite those countries that, in the industry in which I worked, did not enforce the EU directives that existed about nine years ago. They were Spain, Italy and Ireland.

The industry is currently using water in paint in order to protect the environment. Our industry is proud of what we do to protect the environment, and the argument is not to reduce the number of regulations—far from it. More regulation is good news for the environment. The last thing that I would want is for Scotland or the UK to go down the road of cheapskating and reducing regulation. The argument is simply that we want a level playing field with our competitors.

As I explained, I was not affected because we were all regulated equally in the UK and I competed only within the UK, but if I had had to compete with businesses abroad, I would have been cuffed—I would have had no chance. They should be regulated to the same level as I was—that is my argument. I have not heard an answer to that. Should the committee be pushing for our authorities to ensure that the EU regulates properly throughout its jurisdiction? One thing is for sure: because we have SEPA, a body with which I am involved quite a lot, we pay attention and do the job that we are asked to do. Should we be putting a wee bit of muscle in there?

Stephen Boyd: Absolutely. If there is any clear evidence of other member states not honouring their commitments with regard to any EU directive, the STUC will always support the UK Government in fighting the corner of business.

Professor Griggs: It goes beyond that. It is not just the UK Government that should fight; there are more and more cases in which the Scottish Government should fight as well. We took evidence from a civil servant on a piece of waste management legislation that was coming into force. The argument came down to the definition of waste in Europe, which is set out clearly. Our view was that the definition of waste was wrong and needed to be changed, but we were told that the Department for Environment, Food and Rural Affairs would not fight for that. We thought that if

DEFRA would not fight for it, we should, because it has a particular impact on a part of the Scottish agriculture industry. If the EU understood the case for our wanting to change the definition of waste, it would probably accept it. I think that there is a case for our making a lot more stringent noises, if that is the right phrase, about issues that affect us specifically and that we think stronger discussions with Europe could solve.

Alex Neil: I have just a couple of questions. The STUC's evidence states:

"The UK is ranked 6th out of 175 countries in the World Bank's Ease of Doing Business rankings".

That supports what Stephen Boyd has just said. It continues:

"The OECD recently constructed a composite policy indicator of flexibility"—

which I am sure is not a best seller—

"which ranked the UK the highest among all OECD economies."

Where would Scotland rank in that type of survey? Would we be as high up as the UK?

Are we getting a mixed message about the barriers that regulation creates for economic growth and for companies? You are telling us that the UK is one of the best and most flexible places to do business. There seems to be a bit of a contradiction.

Stephen Boyd: The STUC has been consistent on the issue. Where Russel Griggs and I will probably diverge in our opinions is that I think that the focus on regulation as a key economic development issue in Scotland is wrong. I do not think that it is one of the key barriers to development at all, and we can draw on a lot of evidence to prove that.

To argue that Scotland sits differently from the UK, you would have to identify the layer of regulation that is implemented separately at Scotland level that impacts on business. Four years into my job—despite sitting on many forums such as this one, discussing regulation as a key barrier to development—I have only very occasionally heard actual instances of a specific regulation preventing a company from growing. In fact, I can identify only one. I have sat in parliamentary committees where the representatives of employer organisations have spoken about regulation in general, but whenever they have been pressed to identify specific issues, they have always struggled to do so.

Russel Griggs and I share an aspiration for better regulation—that is genuine and it is shared with many others. Where we diverge is in our views on whether regulation is a key issue that we face. I would far rather that we were all gathered

around the table to speak about other issues, such as skills utilisation and innovation.

Professor Griggs: When Jim Wallace set up our little regulatory review group, he said that one of the things that the Scottish Government does not do well is communicate with people about why it is doing things. A lot of business regulation therefore simply appears over the horizon—another form that people have to fill in simply arrives on their desk one day. That takes us back to the point that Stephen Boyd made. People are not part of the process of putting regulations into place; rather, they are hit at the very last minute.

Businesspeople will always look on regulation and anything that stops people doing business as impeding them. Businesses must have some rules imposed on them, but one should try to make things as simple as possible in attempting to achieve what one needs to achieve in respect of making a socioeconomic impact on how people operate their businesses.

Stephen Boyd is correct. It is difficult to get businesses to be specific when one talks to them, although we are getting better at doing that. However, I return to an issue that I raised earlier. Partnership is important. The Government and business should sit with whoever around the table and discuss matters at a much earlier stage so that people do not get involved only when directives are about to be implemented. By that time, it is far too late. The Government must realise that it is there to legislate on behalf of the population, of which the business population is a key part. Therefore, it must engage with the business population and ensure that what it puts in place has a desirable effect.

Alex Neil: When is the regulatory review group due to report? Is its remit wide enough? I have had an issue with Scottish Screen, for example. The level of bureaucracy that is involved in applying for financial assistance from that body is unbelievable compared with that involved in applying for such assistance from its counterparts in Belfast, Dublin and Cardiff. Is your remit wide enough to enable you to consider such issues as well as EU regulations?

Professor Griggs: We have a very wide remit. We must produce an annual report on how the Scottish Government is performing with respect to better regulation. The first report will be produced in late spring next year. In the interim, we are trying to design a better process, because we all believe that the process is important. We will not get good regulation if the proper process is not in place. As part of that, we must ask which organisations impose regulations—Scottish Screen has just gone on to my list. We will write to SEPA, the Scottish Commission for the Regulation of Care and Scottish Screen, for example, to ask

them how they can do business better and who, including the Scottish Government, gets in their road when they want to do business better.

The discussions that we have already had with SEPA have led us to believe that it should have more flexibility, which is interesting. It comes down to giving rewards rather than using sticks. Sometimes SEPA says that it would probably be easier to change hearts and minds if it were allowed to give companies rewards for doing things as opposed to using a stick. However, that would mean that members would have to allocate more money to it. It is interesting that the business model on which SEPA and the care commission are set up encourages them to collect fees and impose licence fees. That model, rather than anything else, is wrong. They would have to be provided with more money to change hearts and minds, but that could be the right approach if it resulted in better regulation.

The short answer to Alex Neil's question is that we have as wide a remit as we want.

Irene Oldfather: I thank Stephen Boyd for the STUC's submission, which is useful and helpful. It answers many questions that we might have had.

I want to ask about the European Commission's target of reducing administrative burdens by 25 per cent. Most of the witnesses who have appeared before the committee have perceived that to be quite a good thing, but it is much more difficult to get people to say how they would reduce administrative burdens, exactly where the 25 per cent cut would come in and how things would be measured. The STUC's submission states that arbitrary targets are

"likely to involve a scandalous waste of a scarce resource".

I am quite attracted to what it says. Will Stephen Boyd say a little bit more about that? Does CBI Scotland also subscribe to that view? Does it have a different view on how we can reduce administrative burdens?

12:00

Stephen Boyd: When it comes to regulation, I am not a fan of arbitrary targets. Establishing the baseline involves an awful lot of work. At Westminster, a whole industry has grown up around the better regulation agenda. I think that about 500 civil servants are working on better regulation issues. They are trying to identify, measure and justify cuts in the administrative burden on business. To be frank, they are trying to achieve the impossible.

The only argument for arbitrary targets that stacks up is that they signal the Government's intent. I understand where people are coming from on that. From the FSB's perspective, having a

target in place allows it to go back to its members and say, "We've got the Government to recognise that this is an issue. It now has this target." I understand that approach, but I do not support it, because it is not helpful. It works against what we are trying to achieve with better regulation.

Also, there are often instances where business wants new regulation. Douglas Greig will probably laugh if he thinks back to a civil servant who was head of our secretariat, who was fond of pointing out such instances. His remit covered enterprise and industry and he dealt with companies and industry organisations that were looking for new regulations. For example, the Scotch whisky industry wants regulations that allow it to derive a premium from its Scottishness. Arbitrary targets would work against its being able to achieve what it wants quickly.

Arbitrary targets are not helpful. All the party manifestos at the Scottish election included targets for cutting regulation, but I do not think that that is the right way forward.

Professor Griggs: I will give you my view, which is not the CBI's view. One of the great things about not working for the CBI but just representing it is that I can give you my own view.

If we are to have a baseline to measure from, we need to be sure that it is accurate. My view has always been that we do not have an accurate baseline. A lot of the numbers that have been bandied about are guesstimates. Twenty per cent will be taken off something that is not an accurate number in the first place. The regulatory review group is about to start work on collecting information, over time, that will allow us to put in place a baseline in Scotland.

We keep coming back to poor SEPA, but if the enacting body sits down with a company that says, "In the end, it will cost £3.5 million to implement this," and it can prove it, there has to be a damned good reason for doing it, because that is a lot of money for the company to shell out. We must realise that we need an accurate baseline. My view is that we have become involved in the process of seeking a number rather than standing back and saying, "What's the right way of doing this?" I have a lot of sympathy with what Stephen Boyd said.

One reason why the group does not support the one in, one out policy is that we could remove a little one and put in a huge one. We need to consider the impact of each piece of legislation, which is difficult to do. There has to be an element of pragmatism. Yes, I would like to know how much regulation costs business, but we need to work in such a way that we all have faith in the number that we start with. If we have that, we can perhaps reduce it.

The Convener: We have been asking witnesses about the use of section 57 of the Scotland Act 1998, under which the UK Government can legislate in areas of devolved competence. With reference to EU directives, is it your view that section 57 is being used appropriately? Have you been consulted in cases where section 57 might be used?

Professor Griggs: I cannot think of an example. With one of Stephen Boyd's colleagues, I was on the previous Minister for Justice's expert group on corporate homicide. We talked about whether it was a UK exercise or a Scotland-only exercise, but I cannot think of an example of the use of section 57.

As I said, the regulatory review group is investigating whether the wording of section 57(2) makes it more difficult for Scottish civil servants to be more flexible in their interpretation of the implementation of EU legislation in Scotland. Two director generals have said that that is the case, and I can come back to Alex Neil with examples of challenges that they have identified in that regard.

Stephen Boyd: Although it was decided to implement the public sector procurement directive separately in Scotland, civil servants mirrored almost to the word the approach of the Office of Government Commerce in London. We struggle to see the value in doing that. If we are transposing separately, consideration should surely be given to what can be achieved for Scotland, but such consideration seemed to be absent from the discussions on the public sector procurement directive.

Professor Griggs: At its most recent meeting, the review group received a presentation from representatives of the Convention of Scottish Local Authorities, trading standards officers and a member of the Scottish Government on the implementation of the local better regulation office in Scotland. We concluded that we do not see a reason for the LBRO in Scotland. Although the Regulatory Enforcement and Sanctions Bill will apply throughout the UK, its purpose is to put right a problem that exists in England but not in Scotland. Sometimes, UK-wide legislation does not have the rationale in Scotland that it has in England. The rationale for the LBRO is sound in England, but it does not apply to Scotland, and we cannot see why we would want to add another layer of bureaucracy and—more important—change the relationship between local trading standards officers and companies in Scotland. My point has nothing to do with section 57; it is about UK legislation that is not needed in Scotland.

The Convener: When legislation is implemented on a UK basis, is there as much consultation as there would be if there was to be separate, Scottish transposition? Would it be

useful if the Scottish Government set out criteria to determine cases in which the use of section 57 would be appropriate?

Professor Griggs: We are getting better at becoming involved in critical issues, because good people work with us to ensure that that happens, although we do not do much more than scratch the surface. Much small UK-wide legislation comes through, but we get involved only in bigger issues, such as the LBRO.

Criteria on the use of section 57 probably would be useful.

Stephen Boyd: If major employment legislation was to be transposed on a UK basis, the TUC would lead on the issue at UK level and we might contribute separately. There is usually an opportunity to contribute at some stage, although it might not come early enough in the process. The experience of stakeholders at UK level is comparable to the experience of stakeholders in Scotland. Sometimes, good practice has been followed and we have been involved at an early stage in the process; at other times, there has been little or late involvement. Guidance would not be unhelpful.

Professor Griggs: John Park said that companies do not complain about regulations that they think are bad, which takes us back to the point that Alex Neil made. Many companies do not realise that—if we consider the enterprise networks in Scotland—business support, skills and many tools that companies use are totally different in different parts of the UK. It is not just England versus Scotland; it is England versus Scotland versus Wales versus Northern Ireland. Given the amount of bureaucracy—if I can call it that—that each country has to go through to satisfy requirements north and south of the border, many companies in Scotland do not realise that they are able to apply for or are getting less or more support than are the companies with which they compete south of the border. I illustrate my comments with a simple example: England is still spending a lot of money on training people at work, whereas Scotland spends very little money on that, which reflects the different directions of Government policy during the past year. I guess that businesses do not realise that.

Gil Paterson: For the record, I draw the committee's attention to my declaration in the register of members' interests. I have been talking a lot about regulation, and changes to the system might have an impact on my business. I should make that clear.

The Convener: Thank you. I thank Stephen Boyd and Russel Griggs for their helpful evidence.

European Union Services Directive

12:10

The Convener: Item 3 is consideration of a paper from the clerk on the EU services directive, which is a far-reaching directive that must be implemented in domestic law by December 2009. The paper sets out the directive's key aspects, current developments and proposals for advancing the work. Do members have any comments on it?

Irene Oldfather: It is a good paper—informative and comprehensive—and I congratulate the clerks on making some sense out of the directive. I am happy with the recommendations.

Alex Neil: Hear, hear.

Iain Smith: I am happy with the recommendations, but I suggest that it might be worth drawing the directive to the attention of the regional Parliaments that we intend to visit to see whether they have any comments on it that might be helpful to the reporters when we visit.

The Convener: That is helpful. I am sure that we can build it in.

Are members content to agree the recommendations in the paper?

Members indicated agreement.

European Union Reform Treaty

12:11

The Convener: The fourth item on the agenda is consideration of correspondence from the Scottish Government. Members will recall that, at its meeting on 30 October, the committee considered a paper by the clerk on the EU reform treaty and agreed to seek clarification from the Scottish Government on a number of issues. Copies of the committee's letter and the response from the Minister for Europe, External Affairs and Culture are attached as annex A. The paper from the clerk proposes certain action. Do members have any comments on the letter from the minister or the clerk's paper?

Irene Oldfather: I am happy with bullet points 1 and 2 of the recommendations. However, on bullet point 3, I notice that the deadline for submissions to the House of Lords committee's inquiry is 14 December, and I wonder whether we have discussed the matter enough to make a submission as a committee.

Alex Neil: Perhaps we could ask for an extension.

Irene Oldfather: I would be happy with that. At the moment, all that we have is the minister's letter, which contains some mixed messages. For example, she says:

"there are no uniquely Scottish points of substance"

and that

"The Scottish legal system's interests ... coincide with those of the other jurisdictions in the UK".

However, she makes a different point—one with which I do not particularly agree—on marine biological conservation. Also, we have the joint ministerial committee on Europe, which would provide an opportunity for the Government to articulate its views on the reform treaty, so I am not clear what we would highlight as the committee's concerns, as opposed to the minister's concerns.

The Convener: Perhaps "submission" suggests something bigger than what is intended. My understanding—the clerk can comment in a moment—is that the recommendation relates to the fact that consultation with the Scottish Government has not been mentioned. Will you clarify that, Jim?

Dr Jim Johnston (Clerk): In its initial letter to the minister, the committee raised concerns about the absence of reference to the devolved Administrations in the UK Government's white paper and the explanatory memorandum that the

UK Government presented to Westminster. The intention was to flag up both those points.

The Convener: It is a specific comment rather than a detailed submission.

Irene Oldfather: If it is a specific point, that is fair enough.

The Convener: Do members agree with the recommendations as set out in the clerk's paper?

Members indicated agreement.

Transposition of European Union Directives Inquiry

12:14

The Convener: The fifth and final item is consideration of a paper from the clerk on the proposed visits by reporters to legislative regions, as part of the committee's inquiry into the transposition of EU directives. Do members have any comments on the paper?

Alex Neil: I have a minor one: I do not want to use up a Sunday in the recess, so can I go out on a Monday?

The Convener: I am sure that the clerk will try to take that on board. Are there any other comments?

Iain Smith: It is always advisable for reporters to be present on the day that the visits are carved up.

Gil Paterson: I have a point on the section about good comparator regions. Perhaps I am making too much of this, but the regions in the countries that are mentioned implement law, whereas we make law. Am I making too much of the difference?

Alex Neil: Given the proximity to lunch, the answer is yes.

Irene Oldfather: I agree with that, Alex.

The Convener: The regional Parliaments that are being visited make laws.

Gil Paterson: However, they are in homogeneous systems of law. The difference is that Scotland has a unique system of law, whereas the Parliaments that are being visited are integral parts of their states that are given the right to implement law. The point that I am trying to make is that, because our law is entirely different from English law, we should look at the situation somewhat more dynamically.

The Convener: We take that point. Are you suggesting a specific amendment to the paper?

Gil Paterson: No, just that the reporters should keep that in mind when they go.

The Convener: Indeed they should.

Iain Smith: We are all conscious of that. The United Kingdom is unique in that it has a separate legal system in one part of the union. The other countries that operate on a devolved basis do not have that.

Alex Neil: It is unique and temporary.

Iain Smith: Are you suggesting that we adopt English law?

The Convener: We are in danger of returning to item 1 if we go on with this much longer. Do members agree with the recommendations that are set out in the clerk's paper?

Members indicated agreement.

The Convener: As that is the last item on the agenda, I close the meeting. I thank members for attending.

Meeting closed at 12:16.

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