EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Tuesday 8 January 2008

Session 3

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
1st Meeting 2008, 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, Ettrick and Lauderdale) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Lloyd Austin (RSPB Scotland)
Tom Axford (Scottish Water)
Bill Band (Scottish Natural Heritage)
Jim Conlin (Scottish Water)
Jonathan Hughes (Scottish Wildlife Trust)
Andy Robertson (National Farmers Union Scotland)
Muriel Robison (Equality and Human Rights Commission)
John Thomson (Scottish Natural Heritage)

CLERK TO THE COMMITTEE

Dr Jim Johnston

ASSISTANT CLERKS

Emma Berry
Lucy Scharbert

LOCATION

Committee Room 1

Scottish Parliament

European and External Relations Committee

Tuesday 8 January 2008

[THE CONVENER *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Malcolm Chisholm): Good morning and welcome to the first meeting in 2008 of the European and External Relations Committee in the third session of the Scottish Parliament.

The first item is to ask members whether to take in private item 5, which relates to the committee's approach to its work on "A National Conversation". Do members agree to take item 5 in private?

Members *indicated agreement*.

The Convener: Thank you. We have unanimity at the start of the year; let us see how long it continues.

Transposition of European Union Directives Inquiry

10:01

The Convener: Item 2 is further work on our inquiry into the transposition of European Union directives. We have a range of witnesses, whom I thank for coming this morning. Lloyd Austin and Jonathan Hughes are here on behalf of Scottish Environment LINK, Andy Robertson is from the National Farmers Union Scotland, and Muriel Robison is from the Equality and Human Rights Commission. I thank those of you who have already submitted useful and interesting written evidence. In view of that, we will go straight to questions.

I will kick off. When the witnesses have been consulted on directives, has the timing of consultation allowed for stakeholders to influence the legislation effectively? I suppose the corollary to that is to ask whether the process would benefit from earlier consultation of stakeholders. Would Scottish Environment LINK like to start? Its submission touched on the subject.

Lloyd Austin (RSPB Scotland): The simple answer is that consultation varies a lot depending on the directive and the part of the Government that is responsible for it. We have seen examples of early and effective consultation as well as of late and ineffective consultation. Our written evidence mentions the water framework directive, which was an example of early and effective consultation. Another example that we give, however, is the environmental liability directive, the due transposition date of which has passed, and which was consulted on only early last year. As far as we know, no progress has been made on that so far.

The situation varies, but the implications of the question are that the earlier consultation takes place the better, and that it is even better if the discussion between the Government and stakeholders takes place upstream of the process in Europe while the directive is in formulation, so that stakeholders, Government representatives and everyone else can influence the nature of the directive as well as its implementation.

Muriel Robison (Equality and Human Rights Commission): The Equality and Human Rights Commission has been involved mainly with directives that have been implemented by Westminster. We are seeking to put in place a formal process for consultation between the Scotland end of the Equality and Human Rights Commission and the Westminster, or British, part.

Obviously the commission has been established only since October last year. Prior to that, I was involved with the Equal Opportunities Commission and the implementation of directives by Westminster. However, there was a more ad hoc arrangement for Scottish input on consultations through our colleagues down south. The Westminster Government would consult the Equal Opportunities Commission and the Equality and Human Rights Commission early in the process, but there is currently no formal process for relations at Scottish level: such a process would be valuable.

Andy Robertson (National Farmers Union Scotland): I would distinguish between consultation on a European directive and on its implementation. To reiterate what we said to the previous European committee about a year ago, when it comes to proposed directives, there is virtually no consultation at Scottish level, so we are normally faced with consultation on directives' implementation. The difficulty is that there is very limited scope in simply implementing something that is already signed, sealed and delivered. If, however, we had a chance to influence the original directives, there would be a much better chance of arriving at something that is right for Scotland. I agree with my colleagues: the earlier, the better. If we were consulted on draft directives, that would give us a chance of getting something that is relevant to Scotland.

Iain Smith (North East Fife) (LD): I know that Scottish Environment LINK does not like the phrase, but I will raise the thorny issue of gold plating. NFU Scotland referred to the perception that the United Kingdom, and Scotland in particular, tend to go beyond the requirements of implementing European directives. Do you have any concrete examples of the UK or Scotland implementing directives in a way that has gone beyond what other member states have done, to the disadvantage of Scotland? Alternatively, do you have examples in which Scotland or the UK has gone beyond the requirements of a directive in a way that has been beneficial for Scotland?

Andy Robertson: A current example is the nitrates directive, which is causing us considerable difficulty for all sorts of reasons, one of which is that the directive has been in place since 1991. There has been an action programme in place for the past four years, but there has been pressure from Europe to up the ante on the directive.

We do not have the same problem with nitrates as other parts of Europe, but the end result of the process that we have just gone through is a regime that is exactly the same as that in the rest of Europe. In that respect, it could be argued that there has not been gold plating, but we argue strongly that the measures have not been justified by scientific evidence—it has not been shown that they will make a positive difference. We had a debate for more than a year about what was required to implement the nitrates directive. The result was that, despite all the arguments and evidence, we ended up having to do exactly the same as everybody else, regardless of whether it would make a difference in Scotland. I can elaborate on that if the committee wishes.

Muriel Robison: On the implementation of directives at UK level, our experience is perhaps the opposite. The pressure not to gold plate has resulted in the Westminster Government's not going as far as has been necessary—certainly not as far as we have argued was necessary. The Government was on the other side of a judicial review that we took forward on the equal treatment amendment directive. We argued successfully in the judicial review that the Government had not gone far enough. Therefore, the Sex Discrimination Act 1975 required to be amended to bring it into line with the minimum requirements of the equal treatment amendment directive. My impression is that the pressure on the Government wherever possible not to gold plate or overimplement in respect of the policy had the effect of prolonging uncertainty over the implementation of that directive.

Jonathan Hughes (Scottish Environment LINK): This is a good point in the proceedings to mention the Davidson review of the implementation of EU legislation, which makes four main points on gold plating.

First, it makes the point that

"many allegations of over-implementation of European legislation are misplaced as they either relate to concerns about the EU measure itself or wrongly assume that certain UK legislation originated from the EU".

Secondly, it says that

"it can sometimes be beneficial for the UK economy to set or maintain regulatory standards which exceed the minimum requirements of European legislation".

Thirdly, it says that

"evidence to support assertions that the UK implements and enforces more rigorously than other Member States is … lacking",

and fourthly—this is the killer for me—it says that

"the OECD and World Bank consistently report that the UK has one of the most favourable regulatory environments for doing business in the EU."

Those are four fairly strong arguments that gold plating is something of a myth.

Lloyd Austin: I will add a couple of points that follow on from what Andy Robertson and Muriel Robison said. I put on record that we do not necessarily agree with Andy Robertson about the evidence for the need for action on the nitrates

directive. However, as Andy said, although the directive was passed in 1991, the action plan was not put in place until a couple of years ago. That is an example of delay being as big a problem as implementation. It would have been easier to achieve results had the action plan been put in place earlier—which would have enabled land managers to carry out the work that was needed over a longer period—and had the work been funded adequately over that longer period.

I agree with Muriel Robison that the pressure not to gold plate—which as Iain Smith said, is sometimes a confusing term—can cause problems. Our submission gives the example of the environmental liability directive, on which the pressure not to gold plate is leading the UK Government and the Government in Scotland to propose transposition that will be inconsistent with existing national legislation. That point was picked up by the House of Commons committee that considered the directive's transposition in England and Wales, which recommended transposition that deals with nationally important sites and nationally important biodiversity, so that we have consistency with existing national legislation. That would not put in place additional regulation, but would achieve consistency, even though it would be more than the directive requires. I recommend that we take a step back and consider what we are trying to achieve. We are trying to achieve what our national legislation already tries to achieve, so let us be consistent with it, rather than be pedantic about what the directive requires.

Iain Smith: Paragraph 18 of the NFUS written evidence states:

> "There is concern that the Scotland Act places a blanket obligation on the Scottish Executive to implement legislation in full, and advice on this issue from Brussels and Edinburgh is conflicting."

My understanding is that the Scotland Act 1998 does not place "a blanket obligation", but simply places an obligation on Parliament and ministers not to act in a way that is not compliant with EU legislation. What advice have you received, particularly from Edinburgh, and from whom has it come, that suggests that the Scottish Government and the Scottish Parliament, in implementing EU legislation, are obliged to act differently from the rest of the United Kingdom or the rest of Europe?

Andy Robertson: That is one issue that the committee could usefully bottom out, because it has plagued much of our work for a considerable time. I am a former official. As I understand it, the official advice from lawyers in the Scottish Government is that the Scotland Act 1998 says—I think that the relevant section is 57(2)—that there is no discretion and that the Scottish Government must implement EU legislation in full without any deviation from its wording. That is an important point because, although I am not a lawyer, to my mind, the 1998 act says simply that the responsibility for implementing European legislation has passed to the Scottish Parliament. I agree with Iain Smith that it does not say that EU legislation must be implemented without any regard to issues such as its relevance to Scotland. However, my understanding is that the Scottish Government solicitors' view is that we must implement directives absolutely to the letter and with no discretion. It would be useful if the committee could bottom out that issue because, in practice, we have often been given advice from officials and ministers that no discretion exists. I do not think that that is the case.

10:15

The Convener: We will certainly check that out. Thank you for commenting on that.

Alasdair Morgan (South of Scotland) (SNP): This question is really for Mr Robertson. We should leave aside the nitrate vulnerable zones, because I know that it is a thorny issue at the moment—I suspect that nobody around the table wants to defend the 1991 Conservative Government.

Alex Neil (Central Scotland) (SNP): Not even Ted Brocklebank.

Alasdair Morgan: Exactly.

In the written submission—certainly in paragraphs 7 through 14—there are allegations about what implementation of regulations does, but there are no examples. Mr Robertson finds himself in a three-to-one situation on the panel in regard to implementation. I do not know whether he is in a position to give us any examples now, but it would do his case a lot of good if he could at some stage provide examples of where we are getting the unintentional side effects, where farm sustainability is being seriously damaged and, more important, how that could have been fed in to the process before we got to the current situation.

Andy Robertson: I have two things to say. First, I refer back to our previous submissions to the committee, in which we gave one or two examples. I know that colleagues from the Scottish Environment Protection Agency get annoyed when we keep raising it, but the waste directive is a good example. The first interpretation of it classified stones that come up during field cultivation as waste, so farmers had to get a license to put them in a hole. Eventually common sense came through, but that is a very good—small, but very silly—example of a literal interpretation that did not refer to the original objective of the legislation.

Another example, to which we also referred previously, is the waste incineration directive, which has had unintended side effects. In abattoirs, there is a by-product called tallow, which abattoirs were able to reuse as a renewable fuel to power their process. When the waste incineration directive came in, tallow was classified as waste, so abattoirs were not able to use it and had to go back to using fossil fuel for power, which seemed to be completely contrary to the wider Government agenda of using more renewable energy sources.

Alasdair Morgan: It would be handy if we could look back at those directives to find out whether there was any stage in the process at which those issues were raised, or whether there was an occasion on which they should have been raised.

The Convener: Okay—we can do that.

John Park (Mid Scotland and Fife) (Lab): I have a couple of questions. First, I want to try to get a wider picture of where you all sit on the issue. It is interesting to note how you are now engaging at EU level in terms of trying to influence directives. It would be good to get a flavour of that from each organisation, as it will be beneficial for our wider discussion. One thing that has come up in our recent evidence sessions—not just around this issue, but more generally—concerns stakeholder engagement and the tripartite social partnership in which Government and interested parties sit down together and discuss issues as early as possible and then agree a framework and process for going forward. Can you give me an idea of whether that has any support? Have you any ideas or solutions relating to that?

Jonathan Hughes: That question is interesting. In some ways our organisations are going through the same process, certainly from the Scottish Wildlife Trust's perspective—I am thinking about it as a UK body now—as we have just commissioned the Institute for European Environmental Policy to provide us with a report on the potential for Europe-level advocacy. I think that a lot of non-governmental organisations are going through that process, as they realise that up to 80 per cent of environmental law now comes from the European Union. We should perhaps engage more at that level and put more resources in because we face the same questions.

How Parliament can achieve that is beyond what we can advise, but we would certainly be interested in engaging in, or contributing to, the development of a process by which Parliament could engage upstream during the development of directives. That would involve influencing the original proposals as they emerge from the Commission and contributing to working groups and technical groups as directives are developed. It is at that stage of the development of directives that we can get the most traction in terms of influence. As I said, we are certainly interested in working with Parliament further on that.

Lloyd Austin: I agree with Jonathan Hughes on the first part of the question, on engagement with the EU. We work in partnership with organisations throughout Europe including the European Environmental Bureau, BirdLife International and WWF international. We could do plenty more, but we are underresourced at EU level.

On the second part of the question, on stakeholder engagement, I refer back to the water framework directive as a positive example. Before transposition, the then Executive formed a stakeholder group, involving all the parties, to discuss the issues. That led to the Water Environment and Water Services (Scotland) Act 2003. That is an example of a case in which transposition by primary legislation generated a climate for all-embracing stakeholder engagement. That has not been seen in cases of transposition by secondary legislation or other forms of regulation. It is a positive example that should be replicated with other transpositions.

Muriel Robison: Our predecessor commissions—the Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission—worked closely with colleagues at European Union level. We have a European and international division and we intend to increase our European links so that we can exert influence earlier. I agree that influence at the earliest possible stage of negotiation has most value.

With my colleagues in London, I was involved in negotiation around the recast directive on gender. We were able to brief members of the European Parliament and officials on certain aspects of the directive that we thought ought to be amended. We were successful in some respects in doing that. It was extremely valuable to be able to operate at the earliest stages in terms of influencing the approach of the directive.

Andy Robertson: On engagement at European level, NFUS seeks to exert influence through a number of routes. We are a member of COPA-COGECA, which is the umbrella organisation for farming unions in Europe, and we also jointly run an office in Brussels with the English, Welsh and Northern Irish farming unions. We seek to influence both the European Parliament and the European Commission through those two mechanisms.

I will reiterate a point that I made earlier. At the moment, primary legislation is the best and, perhaps, only route. For obvious reasons—the UK is the member state, and so on—a lot of negotiation on directives is carried out at UK level and through UK Government departments. There

is no obvious route in from a Scottish perspective, so we have to make our own.

As Lloyd Austin said, there are good and not-so-good examples of stakeholder engagement. The only point I would add is that, if stakeholder engagement on implementation starts from the basis that "This is what the EU directive requires—you will have to do X, Y and Z", it can be a frustrating process. People sit around the table with little room for manoeuvre. I hope that I do not sound like a stuck record, but I feel strongly that unless we get back to stakeholders having more influence on draft legislation, their engagement will work only within very limited parameters.

John Park: Obviously, there are devolved and reserved issues that concern you. I want to get a picture of things. Do you engage through the NFU nationally if an issue has a Scottish dimension? What relationship exists?

Andy Robertson: Our first port of call is still the Scottish Government if an issue has a Scottish dimension—we try to influence matters through it, although we work in conjunction with colleagues in the NFU in England and Wales.

I repeat what I said to the committee at this time last year: whatever we say can become pretty diluted by the time it gets to Whitehall. There are many examples of perfectly valid points that we have made being overburdened or overwhelmed by different views from other parts of the UK.

Alasdair Morgan: As the European Union gets wider and more diverse, is it difficult to get across points that affect particular areas? It strikes me that the classifying of stones as waste could have been picked up much earlier. One wonders why it was not.

Andy Robertson: That point applies even more to tallow and rendering plants. The problem was that nobody realised what the waste incineration directive said until very close to the implementation stage.

Alasdair Morgan is right that the issue is difficult. Unless all the ramifications of a directive or regulation are explored from the outset, one can end up in the position in which we ended up a year and a bit ago, when we were faced with a regulation that was to come in within a few months and were told, "Well, that's what it says." The waste incineration directive is still under review and everybody accepts that it says the opposite of what was intended.

Ted Brocklebank (Mid Scotland and Fife) (Con): I am interested in what Lloyd Austin said about nationally protected biodiversity. Will you give us a little more information about that? I am particularly interested in the Donald Trump application at Balmedie. Would the local authority's position in that case have been strengthened if transposed legislation had been applied to all sites of special scientific interest?

Lloyd Austin: I do not think that the local authority's position would have changed. It would still have been the local planning authority and the Scottish Government would still have been the Scottish Government. That is a narrow interpretation of the question.

Ted Brocklebank: You have said that you disagree with the Government's attitude and that it has not gone as far as it should have. Would such an approach have helped in that situation, in the light of the fact that the application has now been called in?

Lloyd Austin: No, because the environmental liability directive is about damage to environmental assets or natural capital such as SSSIs contrary to regulatory approval. If Mr Trump gets planning permission, he will not be caught by the liability because he will have acted within the law.

Ted Brocklebank: What about possible collateral damage? Would it be caught by legislation? You have mentioned damage and recompense for damage that is caused to SSSIs.

Lloyd Austin: Yes—damage that is not approved by a regulatory authority would be caught.

Ted Brocklebank: I think I understand. Okay.

The Convener: Do you want to move on to another issue, or is that all?

Ted Brocklebank: That is fine.

Gil Paterson (West of Scotland) (SNP): In light of what has been said, do we need to beef up the liaison between Westminster and the Scottish Parliament?

10:30

Jonathan Hughes: I note that, in his report, Jim Wallace referred to the Danish example as a "widely respected" and "comprehensive and rigorous" model of good practice. The way that the Danes transpose EU directives is to put a proposal from the European Commission through a fairly complex series of committees. The basic premise is that not only the Danish Government but the Parliament scrutinises a directive before it goes to the Council of Ministers so, by the time it has gone to the Council and through the Committee of Permanent Representatives, it has already been scrutinised and signed off by the Danish Parliament and its eventual transposition is a lot easier.

It might be useful for the committee to examine that model in a bit more detail. The other good

thing about it is that it brings in stakeholders at an early stage of the process. The likes of us would input at an early, upstream stage and would help to develop the directive, so the model is positive from our perspective. It is transparent, involves stakeholders and helps elected representatives to scrutinise a proposal at an early stage.

Lloyd Austin might want to say something about the Westminster example.

Lloyd Austin: The answer to the question whether we can have better or more liaison or discussion is invariably yes, because it would enable discussions and greater understanding to develop. As Andy Robertson said, the member state at Council level is always the UK, so feeding in our views to the UK is always important. However, the European Union is a three-legged beast: it has the Commission, the Council and the Parliament. As all environmental directives are agreed by co-decision, the European Parliament and all Scotland's MEPs—who are obviously a cross-party representation—are equally important in the decision-making process. So we also feed into the parliamentary process through our colleagues in Europe. More liaison and more input of information to all potential players in the final decision are important.

Muriel Robison: I agree with Andy Robertson about there being no obvious route in from a Scottish perspective. The Equality and Human Rights Commission is a British organisation, but we rely on colleagues who are sitting round the table to be aware of and feed in the Scottish perspective. We are trying to establish a formal process to enable the Scottish issues to be fed in. To date, all the directives that are relevant to us have been implemented at UK level, but there is a proposal for an article 13 discrimination directive that would extend into other areas and may well impinge on devolved issues. It would be extremely important for us to feed in at the earliest possible stages of that proposal's development on aspects that might play out differently or that it might be appropriate to tailor differently in Scotland.

It is important for the Scottish perspective to be fed in as early as possible, but there can be difficulties with that because of UK-level implementation.

Andy Robertson: Early engagement is key. We do not do enough serious scrutiny of draft legislation to identify the unintentional consequences about which we have talked. If more such scrutiny went on at an early stage, we would save ourselves a lot of trouble at the implementation stage, when we get back to the rather sterile argument of, "Sorry guys, we've got to do it now because that's what the legislation says." Time would be better spent on the original legislative proposals.

As far as the UK versus Scotland is concerned, there is no doubt that we will always hit situations in which there is a Scottish interest that is not the same as the interest of the rest of the UK. It may be unrealistic to expect the UK to take a different position that will suit Scotland and does not suit 90 per cent of the rest of the UK, but it is possible to try to build in derogations at an early stage, which would mean that we would not end up with a crazy situation for Scotland. We need to be better at ensuring that, if Scotland has a particular issue with a directive, we seek derogations that are built into it early and that the UK, as the member state, pushes hard for those derogations.

John Park: You have relations through your organisations' structures whereby you try to influence the UK Government. Can you influence the UK Government through the Scottish Government? Do Scottish Government officials ask your views about a directive that is to be implemented at the UK level and which has a Scottish dimension? If that has happened, will you give an example?

Andy Robertson: I cannot immediately give you an example, but liaison with Scottish Government officials is normally pretty good and the understanding of the Scottish situation is often good. From my experience as a Scottish Government official, I know that influencing the UK position is sometimes more difficult.

Muriel Robison: We have good informal relations with the Scottish Government and its officials, but it might be better to have something that is slightly more formal at earlier stages. We have good relations, but they are ad hoc.

Lloyd Austin: I agree—relations tend to be ad hoc and informal at the early stage of discussions, until a directive is agreed or until we approach the deadline for implementation and we reach the point that Andy Robertson described, when Scottish Government officials say, "We've got to do it this way because that's what it says."

As Andy Robertson said, earlier engagement in the process is the key to avoiding unintended consequences. I agree that the examples that he gave were absurd unintended consequences and I can think of other such examples from our point of view. It is important to become involved early and to think about a directive's purpose—the public policy benefit that it is trying to achieve—in order to show a different way of achieving that benefit, or a way that is tailored to Scotland, rather than always to think of a way of getting out of implementation through a derogation. We can think about a Scottish way of achieving the purpose to which the UK Government, as part of the European Council, and the European Parliament have signed up through the codecision process.

Europe is not another place that tells us what to do; we are part of the process that leads to a directive and we agree a directive's purpose. We can take a step back, think about a directive's purpose—what we are trying to achieve—and find a Scottish way of achieving that purpose, rather than being pedantic about the detail of transposition.

Jonathan Hughes: We talked in our written evidence about moving away from gold plating to transposition that is fit for purpose. In some circumstances, a derogation might be needed or a directive might need minimum implementation, because it does not fit in with the national policy environment, but in other circumstances a directive's transposition might fit in nicely with an agreed national policy agenda, so we might want to go further. We are talking not about gold plating or doing the minimum, but about transposing legislation to be fit for purpose, which could involve so-called gold plating or minimum transposition.

Irene Oldfather (Cunninghame South) (Lab): We are having an important discussion. Part of the inquiry's objective is to consider how to improve processes. Does a role exist for the Scottish Parliament or even the committee in the process? If so, how could we develop that more formally? For example, the committee examines the Commission's legislative and work programme annually. By using our early intelligence and our Brussels officer, we try to identify issues that are particularly relevant to Scotland.

I am sure that we will not get that 100 per cent right. We must consider how we could better consult stakeholders such as you. If we published information on the website and invited comment from organisations such as yours, would that allow us to pick up issues that we may not have spotted? Might that be a way of improving the process? It would allow you access to decision makers and we could take the issues forward with the Executive and the European Commission, and we could perhaps have an input to the UK Government.

Jonathan Hughes: A positive example of that is what the European and External Relations Committee did on the maritime green paper. The committee held an interesting seminar and put together a fairly comprehensive response. It engaged a whole range of stakeholders in the process. We were invited to the Parliament and sat in the chamber, which was very nice. Such consultation—perhaps conducted at an earlier stage than was the case on the green paper, much more upstream than that—is very positive. That is a good example and more such events should take place.

Andy Robertson: I support the approach that Irene Oldfather outlined. In addition, I hope that it could be a two-way process. Such a huge volume of legislation comes out of Europe that nobody is in a position to pick up on everything. We do our best through our Brussels office and so on to pick up issues at an early stage, but we could say to the committee that an issue was coming up and that our understanding was that the consequences would be X, Y and Z. It would be good if we could bring together all the combined forces to get the right result. Similarly, it would be good if the Parliament were able to alert organisations such as those that are represented at the committee today. It would not mean that anyone had a monopoly on being right or wrong but, as everyone has said, it is important to have the debate early in the process and to have the chance of influencing decisions.

Irene Oldfather: In my experience, if we identify an issue on which there is a particular Scottish perspective—I am thinking about the recent directive relating to Scottish whisky and liquor and so on—the UK and the Commission tend to be willing to sort the issues out and get it right. The difficulty is in ensuring that we know early enough how to deal with the issue. Does the panel have any examples of good practice? The Scottish Environment LINK submission mentions the Danish system, which we had also identified. Do colleagues with whom you work have experience of inputting to other member states in a way that could serve as a model of good practice for us?

Andy Robertson: Jim Wallace's report referred to the situation in Ireland. My colleagues in the Irish Farmers Association work closely with their Government on forthcoming European legislation. That may be down to the fact that it is a relatively small country and there are good relationships between Government and stakeholders and so on, but it is an example that is worth considering.

Lloyd Austin: I can give no examples off the top of my head, other than the Danish one. I reiterate that I support Jonathan Hughes's comments about engagement taking place upstream.

It is worth saying that transposition, which is the subject of the committee's inquiry, is one stage in the implementation of a directive. We keep banging on about upstream, but there is also downstream. Sometimes post-transposition implementation—ministerial decisions and what agencies do with the funding to back up implementation—is equally important. The impact on business, for example, is often seen as negative because the implementation is only regulatory, which is what we get from transposition. However, where implementation is supported by funding to assist transition—for instance, in terms of energy efficiency—the impact is not seen as negative if the implementation is

part of a package. In that case, transposition involves implementation not only of a regulation but of an entire policy mechanism, such as a funding mechanism.

10:45

Irene Oldfather: In your submission, you mention the positive effect of creating a level playing field. Surely that is dependent on the European Commission and others taking action where other member states do not complete the directive in the appropriate way. Do you have experience of the Commission's lack of action in that regard?

Lloyd Austin: The Commission is often portrayed as a huge bureaucracy whereas, in terms of the number of people it employs, it is not much bigger than a small local authority. In proportion to its size, the Commission receives an enormous number of complaints about non-implementation of directives across its 27 member states. I have some sympathy for it in that regard. It is also selective about the cases that it takes to the European Court of Justice. However, it is important to say that the UK Government should not use the argument that it should not properly implement a directive because "they"—another member state, or states—are not doing that. The answer is to encourage, help, assist, or force—whatever is appropriate—the other member state, or states, to do things properly.

Jonathan Hughes: Last year, the European Commission environment directorate-general launched an initiative under which it will look more closely at policing directives. It said that it will try to focus on ensuring that implementation of directives happens on the ground. The environment DG has identified as an issue that the Commission passes lots of directives, but that it does not have the resources to police things on the ground—here's hoping that it will start to tackle the issue.

Andy Robertson: I will take a slightly different tack by returning to the example of the waste incineration directive. The example relates not so much to the Commission but to national Governments and their enforcement of the directive. From our sister organisations, we had pretty good intelligence that other member states were not implementing the directive to the letter. We asked the question of the Government whether other member states were indeed implementing the directive to the letter. I understand that the Department for Environment, Food and Rural Affairs put the question to the other countries through our embassies. Unsurprisingly, the answer was yes. As a result, we were told, "They are all doing it, so we have to do it, too." That is not a terribly scientific way of doing things.

The Convener: We will follow up on the reference that was made to section 57(2) of the Scotland Act 1998. We are also interested in the powers under section 57(1), which allow the UK Government to legislate in areas of devolved competence. Is the UK Government using those powers appropriately or is there a risk that overuse of the powers could undermine the devolution settlement?

Lloyd Austin: Our line on section 57(1) is that we have no view. We question the purpose of a directive from a strictly environmental point of view. We do not mind who implements it, whether the UK Government, Scottish Parliament, a local authority, or any other tier of government.

You introduced your question by mentioning section 57(2), convener, on which I will pass comment. I agree with Andy Robertson that section 57(2) appears to fetter the discretion of the Scottish Government in comparison to the situation in England and Wales. It fetters the Scottish Government's discretion by appearing to require it to implement strictly regulations that some argue are unnecessary.

Section 57(2) also fetters the Scottish Government's discretion to do positive things. For example, pending the approval of the Scottish rural development plan, farmers and land managers will not be able to receive payments for agri-environment measures. That leaves a funding gap. In other parts of the UK, the Government is making such payments at—in a sense—its own risk, without legal backing. However, in Scotland, because legal backing is required for the payments, the discretion to act positively is restricted. It is not just that section 57(2) implies that regulations have to be tighter here than elsewhere; it is also that the potential for positive action is reduced.

The Convener: Are there any other comments on section 57(1)? I suppose that it does not really apply to equality issues, which are reserved.

Andy Robertson: We have no real experience of section 57(1) being used to a detrimental effect. However, in principle, we ought to go for Scottish implementation as much as is possible, because that would be more likely to take Scottish circumstances into account.

Lloyd Austin gave a particular example relating to section 57(2), and I can give a closely allied example. I asked Commission officials whether the section placed a restriction on Scotland, and a French guy burst out laughing and said, "Why on earth is Scotland any different to any other part of the EU? All member states have to implement EU legislation." He could not see why the interpretation in Scotland was any different from the interpretation elsewhere.

Alex Neil: I want to continue on the theme of how we should address the issues that are coming out of this inquiry. Two particular issues have arisen, and Irene Oldfather touched on one that affects the Parliament. In light of paragraph 9 of the evidence from Scottish Environment LINK, I want to explore the need for a better mechanism for consulting on transposition and then monitoring it. The EU now has a dedicated unit for considering compliance and transposition in member states. Within the Scottish Government—and I distinguish between the Government and the Parliament, because the Government has to take the lead on such matters—is there a need for a dedicated unit to shadow the unit in Brussels? The Scottish unit would consider transposition in all Government departments. It might also review issues such as how strictly the lawyers are interpreting legislation. Interpretation might be unnecessarily strict. I direct that question to Jonathan Hughes and Lloyd Austin.

The second issue has been raised by Andy Robertson and Muriel Robison once or twice; it concerns the dilution of the Scottish position before we get to Brussels. We have seen how such dilution can be detrimental to agriculture and farming, and Muriel—who works in a UK organisation—has hinted that people in Scotland rely on the good will of people in London. There is no statutory right for the Scottish position to be heard in Brussels. What is the solution—short of independence, which would of course be the ideal solution? Should there be a statutory right for the Scottish position to be heard in Brussels, even within the context of the UK position?

Muriel Robison: I will answer that second question. The Equality Act 2006 requires the Equality and Human Rights Commission to consult its Scotland committee on any issues that affect the people of Scotland. As I said, we are trying to introduce a formal mechanism, which we call the "statutory question". All my colleagues, at all levels, will be required to ask that question in relation to any issues that they are dealing with—including, of course, any issues regarding consultation on European directives.

There would be real value in Ms Oldfather's idea about the Parliament specifically inviting comments from my organisation because that would ensure that we had a formal input at least to the Scottish Parliament on the Scottish context and it would help us to feed back to my colleagues in London who are in turn stakeholders working with the Westminster Government, the European Commission and the European Parliament.

Andy Robertson: I will respond to the same question. Alex Neil summed up the position beautifully when he said that the process relies on good will because that is exactly right—it relies on good will at either official or ministerial levels so that somebody can pick up the Scottish position. If that good will does not exist for whatever reason, there is no way that Scottish points will be made or heard. There needs to be some way to ensure that the Scottish position is a specific issue and ought to be taken into account, even if it is recognised as a minority interest. Some sort of statutory means of doing that appears to be the only way of ensuring that that happens.

Lloyd Austin: I agree with the comments from the two previous speakers. As we said earlier, the process is about good will, ad hoc and informal relationships between officials. I underline the point that Muriel Robison made—if the Parliament were to ask stakeholders for their views and then sought a response in evidence from the relevant officials, those officials would have greater authority when saying to their colleagues at Whitehall, "This is a concern that has been raised by the Parliament." Such upstream parliamentary discussion that highlights an issue of Scottish concern would bring it into the discussion with greater importance and it is likely that it would be taken up more by the UK authorities in discussions at European level.

Going back to Alex Neil's first question, the Executive is likely to say now that the way in which it is organised with every cabinet secretary being responsible for all five of the strategic objectives is incredibly integrated and it does not need a specialist unit. Although there could be an argument for that idea, how the Government's internal processes work should perhaps be secondary to focusing on the key outcomes of transparency, stakeholder accessibility and engagement upstream. The kind of processes that we talked about the Parliament operating—we used the example of the marine strategy directive—to concentrate minds and generate debate might be a better way of working because that would ensure the kind of stakeholder accessibility and debate that we are all talking about.

Jonathan Hughes: I have a general point. You mentioned a dedicated unit that could form an element of a new process. Any new resources that are made available would be very well spent. Given that it is now estimated that almost 80 per cent of all UK environmental policy originates in Brussels, we are missing a big trick. A unit would be a good idea, but let us also think about various other structures on top that could form the transparent, stakeholder-accessible process that is talked about in the LINK submission, the detail of which is yet to be thrashed out.

Alex Neil: The convener will be glad to know that I will not ask any more questions. However, I suggest that we look at the responses to those

questions from all four witnesses as possible recommendations that the committee might want to develop.

The Convener: Those comments and the earlier ones have been extremely useful. Although we would like to go on longer, I am afraid that our time is up. I thank all the witnesses very much for coming to give evidence this morning. I suspend the meeting for a couple of minutes until the next witnesses come to the table.

10:59

Meeting suspended.

11:03

On resuming—

The Convener: The committee will now take evidence from John Thomson and Bill Band, who are from Scottish Natural Heritage, and from Tom Axford and Jim Conlin, who are from Scottish Water. Welcome to the meeting. Thank you for coming and for your written evidence.

We will move straight to questions. I want to pick up on themes that we discussed with our previous witnesses. Do you think that the Scottish Parliament needs to engage earlier in the transposition process? Would earlier parliamentary scrutiny mean that finalised legislation would better suit Scottish requirements? I do not know who wants to kick off with those questions.

John Thomson (Scottish Natural Heritage): I am happy to do so.

I reiterate what was said by previous speakers who emphasised the need to engage further upstream in the initial formulation of European legislation. That is where much of the key influence needs to be exerted. Certainly, the two directives that perhaps have the greatest bearing on SNH's work—the habitats directive and the birds directive, which go back quite a considerable time—are good examples of how the United Kingdom Government and the then Scottish Office did not engage adequately in formulating European legislation. That should be the main focus for additional attention. However, I agree that the Parliament should engage where possible at an early stage in transposition.

Jim Conlin (Scottish Water): Scottish Water also agrees with the earlier statements about the need for the Parliament to engage earlier in putting directives together and considering their impacts. Several issues that were raised earlier today come down to the implementation of directives once they have been transposed, but many of the problems that emerge are to do with what is actually in the directives. Influencing matters before directives are drafted is the main issue.

Alasdair Morgan: Clearly, Mr Thomson has in effect said that the habitats directive and the birds directive contain defects—I will put it no stronger than that. Was Scottish Natural Heritage aware of the problems before the directives were introduced or did it become aware of the issues only after the event?

John Thomson: As an organisation we did not even exist when those directives were formulated—

Alasdair Morgan: That lets you off the hook.

John Thomson: The issue goes back that far. I cannot really comment on behalf of our predecessors. Certainly, my impression is that the UK Government—we are going back to the late 1970s in the case of the birds directive—did not adequately gear itself up to engage in the European legislative issues at an early enough stage. Things may have improved since then.

Alasdair Morgan: I am not sure that what happened in the 1970s will be of much help to us, convener.

Ted Brocklebank: Try blaming Labour this time.

Alex Neil: I am too young to remember that anyway.

Scottish Water seems to be happy with the current arrangements for consultations and stakeholder involvement. Its submission points out that

"Scottish Water is part of a UK-wide industry body Water UK".

An obvious big difference between the status of Scottish Water and the water companies south of the border is that Scottish Water is a public sector organisation whereas the others are private, profit-making bodies. In formulating a UK position in Water UK, does that difference throw up potential conflicts of interest between Scottish Water and its counterparts south of the border?

I also have a question for Scottish Natural Heritage. Whether deserved or not, SNH has a terrible reputation for nit-picking in implementing regulations and for often quoting EU directives and all the rest of it. Will we see a wee change of culture in SNH? In statements just before Christmas, the SNH chairman seemed to indicate that the organisation might take a slightly lighter touch than has been the case in the past. With all due respect, SNH's former approach is the kind of thing that perhaps gets regulation in general a bad name.

Tom Axford (Scottish Water): Scottish Water is in the public sector and the English companies are in the private sector, but Water UK also represents Northern Ireland Water, which is also in the public sector. All the water companies are regulated industries, in the sense that we have an economic regulator, so our drivers in reviewing legislation and its implications are the same.

Certain issues—for example, sludge burning at Longannet—might be more specific to us than to English companies. It could be argued that, as we are only one of a number of players in Water UK, our voice might not have the same emphasis. However, one advantage of being a public sector organisation is that we have links with the Scottish Government. In that respect, with regard to the water framework directive, we were consulted informally on how the new controlled activities regulations would impact on orders relating to our ability to abstract water. Although we have certain advantages, I do not think that our status has any effect on the process of interaction through Water UK.

Alex Neil: I am sorry about the pun, but has your position been diluted in any way by being part of the UK body?

Tom Axford: It has been diluted in the sense that we are part of a body that includes a number of organisations that are governed by a different legislative regime from ours. As a result, we might not have such a strong voice. However, the forum is still very useful, mainly because it has an office in Europe. We have discussed alternative ways of raising Scotland's profile in these matters, but Water UK certainly has more of an influence in the making of directives ahead of transposition than we might have as a single organisation.

Alex Neil: Do you agree with witnesses on the previous panel that, although good will is an excellent thing to have, it is sometimes not enough in dealing with these matters, and there should be more of a statutory right for the Scottish position to be heard in Brussels?

Tom Axford: Such a move would give a certain level of authority. However, we cannot really comment on that matter.

The Convener: Does SNH wish to respond to Alex Neil's second question?

John Thomson: As nit-picker-in-chief, I should perhaps begin by saying that even nits are part of our natural heritage. Indeed, one of our dilemmas is that some of the interests that we represent do not have a popular public profile.

As far as transposition is concerned, we might be seen as obsessively zealous or nit-picking in cases in which the directives that I mentioned lurk in the background. After all, they are very prescriptive about the process and impose very rigorous tests that must be passed before development can proceed. A succession of European Court of Justice judgments over the years has required the UK Government—and SNH acting on its behalf as its statutory adviser—to tighten up the criteria and tests and to be more rather than less rigorous in its own judgments.

Alex Neil: If you were able to influence matters, say, at green paper stage, would you generally advise that a less prescriptive approach be taken at a European level?

John Thomson: Yes, I would. I cite, for example, the water framework directive, which appears to be emerging from your discussions with quite a good reputation. As far as upstream engagement is concerned, when the directive was being developed, SNH had some input into thinking at European level. I am not saying that our voice was strong, but we had some involvement. SNH very much supported the principle of a framework directive that would give greater national discretion to pursue objectives in a way that was appropriate to the circumstances of member states and, indeed, regions—if I can call them that—such as Scotland. We certainly advocate such an approach and believe that the water framework directive has delivered a better outcome than some earlier, more prescriptive directives.

Alex Neil: Do you realise that the headlines tomorrow will read "SNH Demands Less Nit-picking"?

11:15

John Park: Going by evidence that we have taken from previous witnesses, there seems to be an emerging view that some form of stakeholder engagement is beneficial to any sort of transposition process, whether it involves social partnership or Government holding the jackets around the table. Certainly, the process that Scottish Water went through in relation to the water framework directive seems quite interesting. Do you believe that, even though stakeholders who were involved in that process might not have had all of their issues dealt with at that time and might not have been happy with the final outcome, the fact that they were able to be part of that process was beneficial for them, or do you think that it is not helpful if people who have been involved and have been arguing their corner feel that the process has not delivered what they were looking for?

Jim Conlin: I think that everyone agrees, in general, that the process that related to the water framework directive and the Water Environment and Water Services (Scotland) Act 2003 was the

best process that we have been through so far in terms of the transposition of European directives. There was good stakeholder involvement from the start. There was a national stakeholder forum and there was direct engagement between Scottish Water and the Scottish Government on issues that related specifically to Scottish Water, which was useful.

In our written submission, we make the point that, as you suggest, we were unhappy about the outcome of some specific points. However, there will always be disagreements over issues and instances in which the outcome is not as we would wish it to be, but we would much rather be involved and be around the table at as early a stage as possible.

To emphasise John Thomson's point, the water framework directive was better in Europe than it was after transposition, as it allowed more flexibility in terms of its implementation. A lot of the problems with European directives have been to do with their implementation after they have been transposed. Early scrutiny of legislation and of how it impacts as part of a greater whole is important.

Earlier, someone spoke about the waste incineration directive. Prior to that directive, the urban waste water treatment directive required us to stop dumping sewage sludge at sea, which meant that we had to find something else to do with our sewage sludge. Another directive introduced certain standards relating to putting waste on land, and a waste incineration directive was in the works, which said that waste could not be burned under certain circumstances. However, the situation was not considered as a whole, so when the waste water treatment directive was implemented, the implications in relation to other environmental legislation were not considered. That is the point that Scottish Environment LINK made: it is important to make links between and to understand the full impact of the various pieces of environmental legislation that come out of Europe.

Bill Band (Scottish Natural Heritage): With regard to the strategic environmental assessment directive and the environmental liability directive, Government has done a reasonably good job of having a full stakeholder consultation at the policy stage and the draft legislation stage. However, both directives are quite difficult to get one's head around. We suspect that, for most stakeholders, the absence of detailed draft guidance made it hard for them to understand the day-to-day implications of the directives—the guidance for the strategic environmental assessment directive did not appear until several months after its implementation.

There are lessons to be learned about the need to engage people in the process at an early stage and to ensure that when consultation on draft legislation is commenced, the bones of the guidance, at least, are in place, so that people fully understand what is meant.

Irene Oldfather: I want to follow up on some of those points. The witnesses will no doubt be aware of the Commission's commitment to what it sees as better regulation, simpler legislation and more framework directives. In a European Union of 27 member states, it is becoming increasingly difficult to make meaningful and sensible legislation by setting out the detail—it is much easier to put legislation in framework form. You seem to be saying that that approach worked with the water framework directive, which might be an example of good practice. Are there cases in which that approach did not work as well? Do you have any evidence of the Commission's new agenda coming through and having an impact in the fields in which you work?

Tom Axford: In general, our experience is that Government has adopted a much tighter and more structured process around consultation and the implementation of directives—we cite the water framework directive as one example of that. Perhaps that has not happened in cases in which directives have been transposed late in the process. If one consults a month before a directive must be transposed, the issue is whether as much time will be devoted to considering the consultation responses as would have been the case if more time had been allowed in the process. Overall, the processes are improving, but the situation very much depends on the nature of the consultation.

John Thomson: I will address processes at European level. The general approach is heading in the right direction, but it will be interesting to see how it is applied in the marine area, for example, which was mentioned in the discussion with the first panel, and in relation to the prospective soils directive. In those cases, a broad framework should be adopted that sets out goals and objectives but does not prescribe tightly how they are to be met.

As Irene Oldfather said, it is inevitable that we will have to go in that direction in a community of 27 member states, because circumstances vary to such an extent across the continent. We know from what has been said previously that there are some differences in how the nitrates directives are implemented within the UK, so there are bound to be huge differences when we compare the situation in Romania with that in Scotland.

Jim Conlin: The devil is always in the detail. Although the water framework directive was worded in such a way that it was a flexible framework within which people could work, parts of it were not clear when it came to transposition.

For example, the standards that applied in relation to the definition of good status were not absolutely clear. When one gets down to the detail of nailing down good status, the framework could have a different impact from the one that was anticipated.

I agree that the frameworks towards which European legislation is moving represent a better structure, but the time that is allowed for implementation must be considered. I bring that up because if, as appears to be the case, we are to have targets for climate change, we must ensure with all environmental legislation that we do not improve only one part of the environment while increasing our carbon footprint or our energy usage to the detriment of the environment as a whole. Framework directives are a much better way of addressing that, but they still have not advanced to the extent that at the start of the process account is taken of how long it will take to implement them without increasing our carbon footprint. Again, it is a question of understanding the wider issues, which better scrutiny of the legislation much earlier on in the process will help with.

Iain Smith: We are looking at the position after a directive has been made and how it is transposed into Scottish law. An issue that strikes me from the evidence we have received is that there might be insufficient early consultation, either by the UK Government or the Scottish Government, on the approach to transposition. It may be that existing legislation is sufficient to meet the requirements of EU legislation, or that amendments are required in Scotland, through primary or secondary legislation. On the other hand, a section 57 approach could be used. Would there be any benefit in a formal mechanism, under the rules of the Scottish Parliament, to require the Scottish Executive to come to committee at an early stage with a memorandum of transposition to say how it intends to go about transposing a particular piece of legislation, what approach it thinks it should take and how it will consult the relevant stakeholders?

Bill Band: It would be quite beneficial if a clear statement of the purpose of the transposition were to be considered by committee at an early stage in the process. I focus on the purpose because the mechanisms and options for transposition should be left as wide open as possible at that early stage. You can choose between the options, as long as you ensure that you are adhering to the purpose. Clarity of purpose would be helpful.

Tom Axford: We support the view that it would be helpful to get a high-level statement of purpose early in the process.

Iain Smith: The issue of gold plating of regulation was discussed earlier. Gold plating is often referred to by stakeholders who are affected by legislation. One of the possible reasons for gold plating is to do with not so much the implementation of the requirements but the bureaucracy that goes around that. Someone could be complying completely with the requirements of a piece of EU legislation but suddenly have to fill in a dozen forms and pay a big fee to the relevant regulator in order to show that they are complying. How can we improve that aspect to ensure that we are not putting bureaucratic burdens on stakeholders to show that they are complying with legislation? Should we regulate the regulators to ensure that their approach is not too bureaucratic? They can recover the costs, whereas the stakeholders may have to meet the costs.

Tom Axford: The first solution is for the consultation process to include the draft regulations. As we commented earlier, the devil is in the detail. If you can see the regulations behind the consultation, you can at least see what regime is proposed to come out of it. Regulatory discretion is an issue—it is difficult to understand the differences between how regulations are implemented in Scotland and how they are implemented elsewhere in the UK. I wonder whether Jim Conlin has any experience of that.

Jim Conlin: I should bear it in mind that one of our regulators is sitting at the table.

We mentioned the drive for better regulation, with which we wholly agree. On regulators gold plating the implementation of directives, in my experience that tends to happen because there is a lot of technical detail within the directive that has not been fully understood or is still being developed. The process is at the edge of the technical aspects of implementation, so it is difficult for regulators to be flexible. They feel that they cannot move from the requirements of the legal interpretation of the directive. To get better regulation, you have to ensure that the regulations do not tie the hands of the regulators when it comes to implementation.

11:30

John Thomson: We are talking about one aspect of a wider phenomenon. I entirely understand the criticisms of and complaints about excessive bureaucracy. We, too, strongly support the principle of better regulation. Going back to the implementation of the water framework directive, we supported the principle of general binding regulations, rather than licences, for a lot of activities. That seems to us to be an entirely sensible approach. However, the demands for accountability and transparency and the increasing taste for litigation in society tend to militate in the opposite direction.

In the past, we might well have gone out on site with developers and perhaps other agencies involved in considering a particular proposal and come up with what seemed a commonsense judgment about what was acceptable. However, our organisation is very conscious that nowadays we operate within legislation and in a generally public climate, in which there are much greater expectations that there will be a clear audit trail and documentation showing all the various actions that took place and judgments that were made. It would be difficult to move away from that fully; all that we can do is apply the better regulation approach and principles and try to ensure that we do not overdo things.

Jim Conlin: I have one more point on that subject. There is always the carrot-and-stick approach to better regulation. The carrot should be that, if the regulated industry can self-regulate and do what is required to comply, that should drive the industry towards keeping costs down. The industry gets the advantage of keeping costs and the amount of regulation down, as long as the regulator has the correct stick to ensure that when it audits the regulated industry, the industry can clearly show that it is complying. The move towards better regulation and self-regulation is a move towards all companies fulfilling their responsibilities to comply with legislation.

The Convener: I was interested in what Scottish Water's written submission said about the regulatory impact assessment for the water framework directive. Several questions came to mind but I specifically wondered what difference you think it might have made if the directive had taken a longer-term perspective. More generally, how important is it that long-term costs are taken into account? Is that relevant to the decision whether to transpose a directive differently in Scotland from how it is transposed in the rest of the UK?

Tom Axford: As a regulated industry, we work to four-year regulatory cycles and, as part of that, we have to assess our capital expenditure and the operational implications of any costs that come out of new directives. It is therefore important that we can understand the impact of those directives.

Jim Conlin: Yes, it is a question of understanding the total costs. When we were looking at the national stakeholder fora, there was no understanding of the total cost of the water framework directive to Scotland. That would not have affected the transposition—we are not suggesting that the water framework directive should not have been transposed—but it is much easier for stakeholders to be fully involved and to understand the implications if they can see the total costs and implications of a directive. Scottish Water is able to look at our costs and then to transfer them to our customers through charges, but our customers are also everyone else's customers and they will be impacted by charges from other companies as well. We had the feeling that, as a country, we did not understand the full economic impact of the water framework directive, although Scottish Water could work with the Government and the regulators on its part of that impact.

The Convener: Does Scottish Natural Heritage want to comment?

John Thomson: I would add only that it is difficult to make well-founded estimates of such costs.

Another example is the strategic environmental assessment directive. It remains our firm view that taking environmental considerations properly into account upstream in decision making is likely to reduce costs in the long run, because that will allow us to avoid a lot of nugatory effort and potential conflict later on. However, there is no doubt that the SEA process is resource intensive—we might not have the process quite right.

One of the points that we were keen to make was that the committee should not regard transposition as the end of the process. Having transposed a directive, you have to ensure that you allow for future review and evaluation of how transposition has worked out, whether there is a need to amend the legislation slightly or whether there is a need to revisit some of the processes and procedures to see whether things could be done better.

As Lloyd Austin said, it is important to look beyond transposition into implementation and to review implementation regularly to ensure that the legislation is fit for purpose.

Tom Axford: One of the examples that we are considering at the moment is the bathing water directive, on which there are parallel consultations in England, Wales and Scotland. One of the advantages of that is that we can see whether there are any differences in transposition between Scotland and England and the economic impact of that. Our costs are compared with the costs of the English and Welsh water companies. We want to see whether any differences in cost are coming through that might impact on us and our customers.

Gil Paterson: My question is on the Scottish Water submission, but any of the witnesses can answer it. Section 2 of the submission states:

"across all subject areas, directives are handled by a number of different departments within the Scottish Government and there is no single point of contact (or point of information) where an interested party may ascertain

which forthcoming EU Directives will be implemented and the timetable for transposition."

I do not know whether we can do much about that, given the complexities involved, but is the fact that there is no single point of contact putting individuals or organisations at a disadvantage?

Tom Axford: The main driver behind our statement was the point that we work in four-year regulatory cycles. If we had a single point of contact, even on a website, to tell us what legislation was coming up, how the Government intended to transpose it and the timescales for that, that would help our planning in relation to regulatory submissions. We would welcome a single point of contact. At the moment, individual departments in the Scottish Government produce consultations. Our view is that they are generally of high quality, but each department produces them differently.

Jim Conlin: We provide the expertise on the impacts on the water industry and, to some extent, the water environment in these consultations. As Tom Axford said, we deal with different parts of the Scottish Government, depending on the legislation involved. That generally works well, but the work on the transposition process is always the same. There are also the timescales to consider.

A comment was made earlier about having a dedicated Government unit to mirror what is coming out of Europe, and a website—whether run by the Parliament or the Government—on which future legislation is set out. Those things would help to improve the process. We could then build relationships and partnerships with that single unit.

I have a dedicated team who look at European environmental legislation and do the forward scanning. Scottish Water also employs specialists to look at European legislation and to see what is coming up. I am sure that other organisations do the same. We are aware of the massive impact of European legislation. A Scottish Government unit with which we could link in would be a great advantage.

Gil Paterson: It would save you money.

Jim Conlin: It would save our customers money.

Bill Band: Our not knowing who in the Scottish Government is leading on something is not a problem, because we are well up, ahead of time, on which directives need to be transposed.

The issue of the stage at which we become involved is a little difficult for us, however. We are stakeholders but, for many directives, we have a role as one of the regulatory authorities. It would be helpful for us to be engaged at the outset of the thinking about transposition options. At present, our involvement comes some way down the line: it is once the policy thinking has begun to gel that we get involved as stakeholders. The earlier our involvement, the better.

The Convener: I thank the witnesses for coming and for their extremely useful oral and written evidence. We will make good use of it.

Fresh Talent: Working in Scotland

11:40

The Convener: Item 3 is to consider a paper from the clerk on the fresh talent: working in Scotland scheme, which is part of the previous Scottish Government's—if I can say "Government" retrospectively—fresh talent initiative. If there are no comments, are we content to write to the minister as is set out in paragraph 14 of the paper?

Alex Neil: I have a suggestion for a third bullet point in paragraph 14: we should find out whether there have been further developments on the possible employment of asylum seekers. That seems also to be relevant to the Scottish economy.

The Convener: Where would you like to put that in?

Alex Neil: It would be a third bullet point. Paragraph 5 of the paper says that the report that was prepared by the European and External Relations Committee in 2005

"recommended that the Scottish Executive report to the Committee the views it has expressed to the Home Office on the new points-based immigration system and pursue with the Home Office the case for asylum seekers' employment opportunities."

We might as well roll all that into the one thing.

The Convener: Are members happy with that?

Members *indicated agreement.*

The Convener: Okay—that is not a problem.

Europe Day 2008

11:42

The Convener: Item 4 is a paper seeking the committee's agreement to hold an event to mark Europe day on Friday 9 May. As members will note from the clerk's paper, the Scottish Parliament has marked the occasion in previous years, and the proposal for 2008 is for a conference for young people relating to the European Union's development policies. It is hoped that the report from the conference will be used as evidence for the committee's inquiry into international development. Do members have any comments on that suggestion?

Irene Oldfather: I think that it is a very good idea, and I very much welcome the proposal. Somewhere in the clerk's paper there is something about

"one school from each region"

being invited. When we say "region", do we mean the regions covering—

The Convener: A parliamentary region.

Irene Oldfather: Is there any scope for extending that? There are not many regions.

Alex Neil: Would one school from each local authority be better?

The Convener: I do not know about the numbers.

Irene Oldfather: Would we be able to accommodate that? Not all local authorities will necessarily want to send someone. My own local authority is very interested in the matter, but it has never been selected in the past under the regional system.

The Convener: I imagine that it is an issue of practicalities and of how many people can be accommodated. The clerks will look into the matter. Does Jim Johnston have a firm view on it now?

Dr Jim Johnston (Clerk): We do not have a firm view—it was just a suggestion. We are trying to get a broad sweep across Scotland—we are certainly happy to reconsider the matter and see whether there are other options.

Alasdair Morgan: There would be a problem with inviting schools by local authority because of the way in which local authorities were set up—by people I will not name. They are so varied in size that such an approach could give bias—it could increase the chances of some schools over those of others.

Dr Johnston: We will work with and take advice from the education department.

The Convener: The point has been taken on board.

Do we agree to the proposal and to seek approval from the Presiding Officer and the Scottish Parliamentary Corporate Body for the use of the debating chamber?

Members *indicated agreement.*

The Convener: We will update members as the programme develops.

Item 5, on "A National Conversation", is in private.

11:44

Meeting continued in private until 11:47.

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