

ENTERPRISE AND LIFELONG LEARNING COMMITTEE

Tuesday 8 October 2002
(Morning)

Session 1

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ENTERPRISE AND LIFELONG LEARNING COMMITTEE

27th Meeting 2002, Session 1

CONVENER

Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

COMMITTEE MEMBERS

Rhona Brankin (Midlothian) (Lab)

*Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)

Mr Adam Ingram (South of Scotland) (SNP)

Gordon Jackson (Glasgow Govan) (Lab)

*Marilyn Livingstone (Kirkcaldy) (Lab)

*Mr Kenneth Macintosh (Eastwood) (Lab)

*David Mundell (South of Scotland) (Con)

Tavish Scott (Shetland) (LD)

*Andrew Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Mr David Davidson (North-East Scotland) (Con)

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

*John Farquhar Munro (Ross, Skye and Inverness West) (LD)

Elaine Thomson (Aberdeen North) (Lab)

THE FOLLOWING ALSO ATTENDED:

Mr Lloyd Quinan (West of Scotland) (SNP)

*attended

WITNESSES

Denise Drummond (Tourism People)

Geoff Fenlon (Hospitality, Leisure, Travel and Tourism Sector Skills Council Steering Committee)

Iain Gray (Minister for Enterprise, Transport and Lifelong Learning)

Marc Robertson (Hospitality Training Foundation)

Ed Weeple (Scottish Executive Enterprise and Lifelong Learning Department)

CLERK TO THE COMMITTEE

Simon Watkins

SENIOR ASSISTANT CLERK

Judith Evans

ASSISTANT CLERK

Jane Sutherland

LOCATION

The Hub

Scottish Parliament

Enterprise and Lifelong Learning Committee

Tuesday 8 October 2002

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 10:04*]

The Deputy Convener (Miss Annabel Goldie): Good morning everyone and welcome to the 27th meeting in 2002 of the Enterprise and Lifelong Learning Committee. I am Annabel Goldie and I am the deputy convener of the committee.

I extend a welcome to Michael Smyth, who is sitting on my left. He is the committee's adviser on the budget process.

I have apologies to intimate. Our convener, Alex Neil, and Gordon Jackson are in America on a case study in relation to the tourism inquiry. I believe that Tavish Scott and Rhona Brankin are away on a parliamentary visit to Canada. They are visiting parts furth of Scotland.

Additional Item

The Deputy Convener: I apologise to members for a late intimation of an agenda item. Members will see it on the new agenda that has been circulated, referred to under items 1 and 5. I will give members a brief explanation of how this has arisen.

You might recall that, some time ago, the committee considered a statutory instrument called the Late Payment of Commercial Debts (Scotland) Regulations 2002, which is statutory instrument 2002/335. It came into force on 7 August 2002. Parliamentary procedure requires instruments to be referred to the relevant committee for comment and there is a procedure whereby objection can be made to the application of the instrument if there are grounds for concern.

In this case, no grounds for concern were expressed and, accordingly, the committee approved the instrument. Late yesterday, however, the clerk received intimation from Mr Lloyd Quinan that he has lodged a motion to the effect that the committee recommend that nothing further be done under the instrument to which I have referred. Both the intimation and the motion are competent and timeous.

The procedure is complicated, but I will try to summarise it as best I can. According to

parliamentary procedure, it is proper for a member who is so minded to lodge such a motion before the relevant committee, but that must be done within 40 days of the commencement date of the instrument.

I understand that Mr Quinan will be able to furnish the committee with further information. Apparently concerns were recently intimated to him that required him to investigate the procedure. As I say, he has perfectly competently and timeously lodged his motion.

Under parliamentary rules, the committee has no discretion as to whether it considers Mr Quinan's motion. We are under obligation to do so and that is why it has been put on the agenda as item 5. The committee is therefore enabled to listen to Mr Quinan and to the Minister for Enterprise, Transport and Lifelong Learning, who has been informed of the situation and is prepared to speak on the matter. The committee then has to decide whether it supports or opposes Mr Quinan's motion.

If the committee opposes Mr Quinan's motion, the matter will be at an end and nothing further will happen: the instrument is in force and it will continue in force. If, however, the committee supports Mr Quinan's motion, the matter must come before the Parliament tomorrow—otherwise it will not be considered within 40 days of the instrument's commencement.

At this stage, I am happy to take preliminary questions about the procedure, but I remind members that the committee has no option but to hear the motion under item 5. At that time there will be a full presentation by Mr Quinan and by the minister. If anyone has any preliminary questions to raise, I will be happy to try to deal with them.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): The letter from the Executive to the Presiding Officer about the rather accelerated pace at which the instrument was laid said that the instrument was being laid under section 2(2) of the European Communities Act 1972. It is obvious that this is an important matter for the relationship between the Executive and the Parliament. I am not quite clear what Lloyd Quinan is envisaging. Should the committee take note of the instrument and annul, or should we take note of it, annul and invite a response from the Executive?

I do not know whether we should get an answer through our clerk or through the minister. As far as I can gather—and, like Mr Quinan, I have had only a short time to consider this—this instrument seems to have emerged from nowhere. I understand that the Law Society of Scotland, the Faculty of Advocates and the Scottish Legal Aid Board were unaware of the instrument's introduction. I would like to know the antecedents

of the instrument. I would like to know what this committee can now do with Lloyd Quinan's motion.

The Deputy Convener: I will try to answer those questions as accurately as I can. I understand that this instrument emanates from European law and I understand that member states must comply with a particular directive—hence the need for Parliaments in Westminster and Scotland to enact instruments. Your first point is correct—there seems to be a European dimension and an obligation to comply with a directive.

The parliamentary procedure on delegated legislation is clear. As I understand it, the committee has no discretion in relation to Mr Quinan's motion other than to support it or oppose it. If we oppose it, the matter will die and the instrument will continue unchallenged. However, the Scottish Executive may in due course produce an amended instrument or a new one. I presume that it would be competent for the Executive to do that if there are matters of concern. If we endorse and support Mr Quinan's motion, the committee will, as I understand it, have no further discretion to do anything: if the committee supports the motion, it will go to the Parliament for a decision. I understand that the Parliament's options are similar—it can support or reject the motion.

Brian Fitzpatrick: I had intended to do this when we question the minister, but I should perhaps do it now. I refer to my entry in the register of interests and declare that I am a practising member of the Faculty of Advocates.

The Deputy Convener: I should do something similar. I am a practising solicitor and a member of the Law Society of Scotland.

David Mundell (South of Scotland) (Con): I too am a member of the Law Society of Scotland.

The Deputy Convener: I described myself as a practising solicitor but I hasten to make it clear that I am not doing any practice.

Brian Fitzpatrick: I am sure that you are perfect, deputy convener.

The Deputy Convener: As no other members wish to raise any questions, I am prepared to listen to any initial comments that Mr Quinan wishes to make.

Mr Lloyd Quinan (West of Scotland) (SNP): I would like to address a couple of the points that Brian Fitzpatrick raised. Yes, this instrument appears to be late; and yes, it is the product of a European Union directive. A central issue is that the parent act has no section 2A, so the question whether the instrument is ultra vires arises.

The Deputy Convener: Might I suggest that rather than getting distracted by detail now, Mr

Quinan, it would be appropriate for you to address such matters when we come to item 5 on the agenda. However, you may wish to make some general explanatory comments just now.

Mr Quinan: I was contacted at the end of last week by a couple of solicitors who expressed concern about this instrument. In particular, they were concerned that it would alter the nature of the relationship between the advocate, the solicitor and the client and that it could compromise the advocate's relationship with the court. They also raised issues to do with article 6 of the European convention on human rights in relation to the independence of advocates and judges. Those concerns are the principal reason behind my motion.

A secondary reason is the potential for a number of areas of judicial review. Frankly, I do not think that it is in our best interests to make law that requires to be clarified in court. The Law Society of Scotland has intimated that it believes that the only way in which the instrument can be applied, if it is carried through, is on the basis of a judicial review.

10:15

The Deputy Convener: Those introductory remarks are helpful. Naturally, the question on members' minds is why the matter is being raised at the eleventh hour.

Mr Quinan: The issue also has serious budgetary implications for the Scottish Legal Aid Board and, consequently, implications for the Scottish consolidated fund. I therefore seek an explanation from the minister as to where the additional cash will be found.

The Deputy Convener: I suggest that you raise those matters later. You can direct your questions to the minister, who will be here to speak and respond to points of concern.

Brian Fitzpatrick: When we reach item 5, perhaps Mr Quinan can assist us with a query that I have, otherwise we can get an answer from the minister. I understand that the statutory instrument transposes the directive. It seems that the nub of what Lloyd Quinan is saying relates to the fluidity of the position at common law of the relationship between counsel, solicitor and client. I share his concerns: I am still unsure of the commercial transaction and the nature of the relationship between counsel, solicitor and client.

The word "contract" has been bandied around. From her experiences, the convener will know, although others might not, that in Scotland—at least historically—the relationship between counsel and client has never been a relationship of contract. For example, an advocate cannot sue

his client for his fees at common law, although he might be able to sue the instructing solicitor for his fees if the instructing solicitor is in receipt of funds. I am anxious about the nature of the obligations that are covered by the Scottish Statutory Instrument. Is the relationship a commercial transaction or a contract? If it is a contract, substantial policy issues arise.

When the SSI came before us, I had understood it to be a purposeful recognition of the fact that there can be oppressive behaviour by main contractors and subcontractors in relation to the late payment of invoices. It would be helpful if Mr Quinan told us whether that is the position. If we are unsure about that, I suggest that we get an explanation from the minister.

The Deputy Convener: That is helpful and goes to the nub of the problem. What was presented to the committee as an apparently benign and unexceptional instrument seems to have in its text an effect that, as you rightly say, could alter the historical relationship between clients, solicitors and members of the Faculty of Advocates. I think that Mr Quinan is prepared to address the issue later.

Mr Quinan: You are absolutely correct—that is at the heart of the matter. The original document for England, Wales and Northern Ireland has no proposed section 2A. I will read that section.

The Deputy Convener: I am conscious of the weight of business that is before the committee this morning. Members have received a useful explanation. If Mr Fitzpatrick is content, I suggest that Mr Quinan and the minister address the points that he has raised when we reach the agenda item. Is that acceptable?

Brian Fitzpatrick: Yes.

The Deputy Convener: As members do not have any further questions about agenda item 1, I thank them for their contributions and suggest that we move on. We will deal with the matter substantively later.

Mr Quinan: May I be excused, convener?

The Deputy Convener: Certainly. I thank you for attending.

I remind members and everyone who is present to switch off mobile phones, as they cause sound distortions.

Item in Private

The Deputy Convener: Item 2 is consideration of whether to take item 7 in private. Do members agree to do that?

Members *indicated agreement.*

Tourism Inquiry

The Deputy Convener: Item 3 concerns our inquiry into tourism—in particular the case study visit to Copenhagen and Malmö that Tavish Scott and I undertook recently. Tavish Scott and I made notes on the visit, with the able assistance of Judith Evans, who kept Tavish and me on the straight and narrow. She prevented us from coming to grief and attended meticulously to our every requirement. I would like to record our thanks to Judith for her welcome help.

One of the reasons for the selection of Denmark as a case study destination was its emergence as a good practice model in relation to tourism. We had several meetings. We met the British Tourist Authority, the Danish Tourist Board, Wonderful Copenhagen—the name for the area tourist board for the city of Copenhagen—and HORESTA, which is the tourism industry representative body. It was interesting to encounter HORESTA, because I do not think that there is a comparable composite body in Scotland.

We took an exciting trip on a train over a bridge to Sweden, which enabled us to meet the Malmö tourist board and the director of a Danish academic research centre on tourism, who works between Denmark and Sweden.

Although we will provide a fuller report of the case study, which we intend to put on the website to allow people to get information, I would like to pull out the main points that Tavish and I identified. In relation to Scotland, the position was far from negative or pessimistic. Scotland is perceived as having a high recognition factor. In other words, when people in Denmark who are considering a holiday hear mention of Scotland, they have no difficulty conceiving a positive impression of what the country is about.

However, that positive outlook was qualified slightly by a concern about the accessibility of packages to overseas tourists. In relation to off-the-shelf packages—packages for golf tourists, for example—there seems to be a gap in the product line. There is a gap between the image that people have, which is the image that we want them to have, and the existence of a product that they can procure to enjoy the experience.

The fact that VisitScotland has no staff in Denmark—all overseas work is undertaken by the BTA—is a positive aspect. That was expanded on when the BTA gave evidence at our committee meeting in Inverness. The opportunity exists for a highly constructive partnership between the BTA and VisitScotland. It was said that VisitScotland could piggyback on the BTA's presence to considerable effect. There might even be the

opportunity for a roving presence, to represent Scotland in large areas such as Scandinavia.

A comment was made about the quality of accommodation and service. Although it would be wrong to depict the comment as totally negative, it raised a slight concern. The fact that Scotland is seen as a high-cost destination rather than as a cheap place to holiday means that people have certain expectations about what they will find when they come to Scotland. It was suggested that the quality of accommodation and service did not quite match people's expectations. In defence of the tourism industry, I should point out that other people were quick to say that they had visited Scotland and had had positive experiences of accommodation and service.

On the structures and functions of tourism in Denmark, we were struck by the strong strategic drive for the tourism industry, which is partly the result of Government focus. As other economic activities have been challenged and, in some cases, changed as heavy industry has declined, Denmark and Sweden have recognised the need to concentrate on tourism as a significant contributor to their economies.

We were very impressed by three things that really shone out. The first was dynamism, the second was knowledge, and the third was professionalism. There was a distinct buzz about what was being done by the people whom we met, regardless of the strand of the industry they represented. There was a sense of engagement with all sectors and no confusion about who was operating in what role or who was trying to achieve what. The industry seemed to be significant as a driver of the whole process, and the influence of the industry at a national level is marked. The tourism industry representative body, HORESTA, embraces the whole spectrum of activities in which the industry is interested.

The focus at a national level is very much on larger businesses and the strategic players, such as Scandinavian Airlines. The tourism industry is totally engaged with the airline and everybody works together to determine how they can bring more people to Denmark. We were surprised to hear that training and development is an issue, as the product in Denmark is of a high quality. However, the industry is concerned that training and development could be disregarded, and there is an active campaign afoot to ensure that training is recognised and that the significance of training to maintaining its place in the market and developing that market is not lost sight of.

The public agencies seek to strike a balance between innovation and sustained industry ownership. That is not always an easy balance to maintain, but it seems to be essential for success. Another interesting fact is that significant sums

have been invested in infrastructure. From the moment we arrived in Denmark, the evidence of that was apparent to the three of us. There are links from the airport to Copenhagen and to the Øresund bridge, which links Denmark and Sweden, with a journey time of half an hour. A metro development has also been proposed in Copenhagen. Investment in those infrastructures has been made and will have a direct relevance to the enlargement and development of the tourism industry.

An interesting synergy has developed in the industry in Denmark. Copenhagen has enjoyed spectacular success as one of the top conference destinations and Malmö, in Sweden, is trying to develop that business as well. Instead of competing with each other, the two countries have got together and work in partnership. We were struck by the demonstrable effect of that partnership.

That kind of collaboration extends beyond Copenhagen and Malmö; the Scandinavian countries are marketing jointly on an international basis, especially in the far east and the US. We posed the question whether there was the potential for Scotland to market in collaboration with some of the countries that we regard as competitors. Perhaps we could start to engage with them as potential allies in creating a big brand for the type of destinations that Scotland and Ireland, for example, are.

There are challenges, as in e-tourism, for example. Interestingly, Denmark is facing the same difficulties as we have encountered. The Danish have used the Scottish web portal as a benchmark in developing their own portal. So, praise where praise is due. Nonetheless, the approach that is taken by Denmark seems to differ from the Scottish approach. Danish tourism businesses have their own online booking facility, which is hosted by the industry representative body server, for which they pay an annual fee. The regional tourism agencies operate that service free for small businesses, such as farm-based bed and breakfasts. When there is no commission to pay, businesses seem much happier to sign up to that—for obvious reasons.

It was thought in Denmark that such an approach would help sustain small, traditional businesses, such as inns, which are under threat from other commercial pressures.

10:30

Co-financing with airlines is, in the context of a rapid increase in low-cost flights, a key part of the strategy for Denmark. There is a telling message for Scotland in that. Having a single national airline helps Denmark in that respect.

The approach to marketing countries is changing. Denmark has quite consciously embarked on marketing a branding strategy, rather than promoting individual things, and is trying to make something of an emotional impact on consumers. It uses that to focus on particular areas of tourism and encourage visitors.

All in all, it was an enjoyable and positive visit. There was a lot to learn and there are a lot of useful examples in the Danish experience. We will post a full report on the website, but the factors that I have outlined are, I think, the significant ones as far as distinguishing what happens in Denmark and what happens in Scotland is concerned.

Tavish Scott cannot be here today, but if anyone has any questions about the visit, I will be happy to deal with them.

Brian Fitzpatrick: I was pleased to hear what you said, convener, about the BTA presence. I hope that your report will provide some information on what is available from the authority. I firmly subscribe to the notion that two and two can equal five. It would be interesting to know what market knowledge the BTA has. Such information offers a huge resource for VisitScotland and we should seek to tap into that as best we can.

You mentioned an interesting point about the emerging city region that is Copenhagen-Malmö. I wonder whether we should consider getting a piece of work done on the city region as a driver of tourism activity. That could feed in on a number of levels. For example, it could feed into any work that we do on area tourist boards. If we take the predominance of Glasgow and Edinburgh for arrivals in Scotland, it is clear that there is something going on in those two cities. There are obvious links too between the west of Scotland and Ireland, which might usefully be explored. Anyone who goes to Ikea in Glasgow will notice the number of Ulsterbus coaches there.

Although they may not know exactly what the greater Glasgow and the Clyde valley area is, tourists are more likely to have an idea of what the west of Scotland is, just as they have an idea of what the north of Scotland, Edinburgh and the Lothians and the kingdom of Fife are. We perhaps need to fit in a piece of work on the significance of the city region. I believe that the city region will be the economic driver of this century, if it is not already.

You mentioned the gap in the market for packages. I hope that we will go no further than simply reflect on that position. My strong view is that although issues around infrastructure and help in relation to skills and training and to the promotion of Scotland as a place and Scotland as a brand are all important, innovation in the tourism

product must be driven by the industry. We should not set off on a prescriptive tour and focus on the kinds of packages that we as a bunch of parliamentarians would like imposed.

The Deputy Convener: Those are well-made points, Brian. The lady in charge of the BTA office in Copenhagen, which we visited, not only has fluent English—which was a standard during our visit—but a personal knowledge of Scotland, which impressed me. She has been to Scotland on a number of occasions and is knowledgeable about Scotland. It struck me that the quality of information that she can give inquirers about Scotland will be well informed.

I think that the BTA demonstrated that it can work very effectively for Scotland. As I said, I think that VisitScotland is receptive to that. The potential for a very sound partnership is being developed in Copenhagen.

It may be that we should investigate a case study on the city region aspect. I do not know what the budget or time scale for that would be, or whether the clerk has any comments to make.

Andrew Wilson (Central Scotland) (SNP): I might be able to help. Quite a lot of work on that topic is already under way at Scottish universities. In particular, the University of Glasgow has a project on the Øresund region. It may be possible to ask for evidence in the form of a paper.

Brian Fitzpatrick: Substantial work on that subject has also been done by the Organisation for Economic Co-operation and Development, which organised a conference on it in Glasgow last year. A literature search could be done.

The Deputy Convener: Does the committee agree that we ask the clerk to research what is currently available? It is clear that material is around. Interestingly and quite by chance, we met two representatives from the University of Glasgow on the train coming back from Sweden.

Brian Fitzpatrick: This is where you declare your interest as a member of the court of the University of Strathclyde, convener.

The Deputy Convener: It would be helpful if the clerk could investigate those matters further and see what information can be provided to the committee. I entirely agree with Brian Fitzpatrick that it is not our job—as a committee or as parliamentarians—to start second-guessing the market. We have to leave that task with the industry.

David Mundell: When Alex Neil and I did the e-tourism case study, Eddie Friel from the Greater Glasgow and Clyde Valley Tourist Board gave us quite an exposition on the city region. I am not sure whether he has submitted that formally as evidence.

Simon Watkins (Clerk): He has.

David Mundell: He certainly sent me—and I think he sent other people—copies of a lecture that he gave on that topic. There is a lot of material out there.

The Deputy Convener: Are there any other questions?

Mr Kenneth Macintosh (Eastwood) (Lab): Is there any more information on how the Danes support their airline industry and on the co-financing deals? It would be interesting to know how they balance the support they give various airlines with the desire not to give favoured status to one or to contradict competitive status.

The Deputy Convener: I suggest that I ask the clerk to make further inquiries about that, via the Danish authorities. I do not have specific information on it.

Mr Macintosh: Okay.

The Deputy Convener: If there are no further questions, we will move on. We will now take evidence from two witnesses. I see that the body of witnesses has diminished into one. On behalf of the committee I welcome Denise Drummond, director of Tourism People. We thank you for coming to see us. We are happy to have you before us so that we can take evidence. Would you like to make a brief preliminary statement or would you just like the committee to ask questions?

Denise Drummond (Tourism People): I would be delighted just to answer questions.

The Deputy Convener: That is very accommodating, given the constraints on time that we are confronting this morning. Without further ado, who would like to ask a question?

David Mundell: I have just come back from Paris. I was struck there, as one often is in other parts of Europe, by the fact that the people who are engaged in the industry—waiting staff and others in hotels and restaurants and so on—are mature individuals, whereas in Scotland and in the UK that is generally not the case. Here, they tend to be young people, who tend to move on, people who are working on a part-time basis and, in the case of Edinburgh, a lot of foreign students. Clearly, working in the industry is not seen as a career and people's participation is not long term. How do we turn that round?

Denise Drummond: The issue is cultural. In Scotland, service is not seen as a career or a proper job. Service and servility tend to get mixed up. We must go back to primary education and ensure that youngsters are aware that the service aspect of tourism can be a job and a career.

David Mundell: How would that work? The

suggestion of doing the same job for 20 years might not appear attractive when compared to other careers.

Denise Drummond: The suggestion might not be to do the same job for 20 years. Someone who has been in the business for 20 years, even if they are only a waiter—although we must get away from that attitude—will have 20 years' experience of dealing with people. Such a person will probably be very good at what they do. We must get across the message that people skills and people management skills are worth acquiring.

David Mundell: Other than through primary schools, how can that aim be achieved?

Denise Drummond: It can be achieved by talking up the industry. Many of us who have been in the industry all our lives look back affectionately at exciting times working in kitchens with wacky chefs. We tend to look back with great nostalgia at how bad those times were. We must look forward a bit more. The bad old days are gone; there are some great operators who do good work and who train and develop their staff. Those are the operators with whom we ally ourselves.

David Mundell: The cost of staff is an issue. You say that people should be paid more, but how can we change the pay-price structures if, as we have heard, Scotland is already perceived as being expensive?

Denise Drummond: If one considers only profit and loss accounts, one will see that in most tourism businesses staffing is the biggest cost. If businesses consider staffing merely as a cost, they will try to drive down that cost. We must change that and convince operators to consider how to treat people as an investment rather than simply a cost. If the way things are going in Edinburgh is a guide, in future operators will have to pay staff more because of competition for skilled or unskilled staff. Perhaps the market will dictate that.

Marilyn Livingstone (Kirkcaldy) (Lab): I am interested in the skills agenda. There are differences between young people's perception of tourism in Scotland and their perception of tourism outside Scotland. Page 4 of your submission mentions young people's perceptions and the philosophy of avoiding the industry and looking for a proper job. How are you working with organisations such as Careers Scotland and Future Skills Scotland to try to change those perceptions and to point out that there are good careers in the industry?

Denise Drummond: In recent discussions with the Scottish Qualifications Authority we found that one of the recommendations of its assessment committee is that there should be a compulsory unit on Scottish tourism for those who study

hospitality or tourism. The unit would be on the economic impact of tourism and its importance to Scotland. If we can have that, younger people might realise that there is a career in tourism, rather than simply thinking that tourism is what they see on television about sunnier climes such as Ibiza.

10:45

Marilyn Livingstone: That is positive. Would the industry accept and look favourably on that?

Denise Drummond: I see no reason for a negative reaction, because we are at least letting young people know that an industry exists. Even if they want to take their talents abroad for some time, we hope that they will return.

Marilyn Livingstone: That is good. How do you link with your partner organisations? Does a good structure exist for discussing the identified skill shortages with Future Skills Scotland and Careers Scotland, to ensure that people know the options and the product?

Denise Drummond: My submission says that meetings with Careers Scotland and Future Skills Scotland are scheduled for the next couple of months before Christmas. We will get together, because we must work together. Many organisations are involved in skills in Scotland and it is important that we all sing from the same hymn sheet.

Marilyn Livingstone: Is that working?

Denise Drummond: Yes. I believe that that can happen.

The Deputy Convener: I will ask only one question. You will have heard of the experience in Denmark, where the industry is represented by a composite body that is called HORESTA. Would such an organisation commend itself to Scotland?

Denise Drummond: It probably would. Anybody who entered tourism in Scotland as a rookie would take a long time to get their head round all the organisations. If that amount of time is taken by someone who has chosen tourism as a career, one wonders how long a new operator would take. Anything that can pull organisations together should be pursued.

The Deputy Convener: Three committee members want to ask questions. The clock is even more challenging than usual, for obvious reasons. If members kept their questions pretty pithy—I do not say that with a lisp—that would help.

Andrew Wilson: I will be pithy but not couthie. What does your organisation do that was not done by Tourism Training Scotland? What has changed?

Denise Drummond: What we do that is different is develop the training that Tourism Training Scotland provided, such as the welcome host initiative and the Scotland's best initiative, which provided training for operators. We have built on that and are looking towards the management side of training, which Tourism Training Scotland did not deal with. We are building on and expanding Tourism Training Scotland's work.

Andrew Wilson: The organisation's agenda changed, but nothing changed organisationally. Was the organisation merely rebranded?

Denise Drummond: No. The organisation became industry led and leaner. It has more voice from the industry than before.

Andrew Wilson: That is terrific. What will be the difference between the work that you do and the sector skills council's work?

Denise Drummond: The sector skills council, which is being created, is London based. I expect that we will have the same relationship with the sector skills council as we had with the national training organisations that represented elements of tourism. That partnership will continue.

Brian Fitzpatrick: I am interested in and applaud your organisation's efforts to promote tourism as a first-choice career. At the outset of our inquiry, the committee's adviser gave us a report that said that such a thing as a tourism research consultant existed. I wish that someone had told me when I was taking my highers about such a job, instead of about lawyers or doctors.

The Deputy Convener: What a loss to the legal profession that would have been.

Brian Fitzpatrick: What can be done to promote such career options among younger people and particularly among disadvantaged youngsters? Of all industries, tourism involves an entrepreneurial flair and an advocacy of one's business that can speak volumes in primary or secondary schools, especially to children who might not follow an academic career path, but who might be interested in knowing that they can start as a commis chef and end up running OKO. What can we do better? How can we raise our game more?

Denise Drummond: It all comes back to talking up the image and we have to get to the influencers. It is regrettable if a parent dies of shock at the thought of their child becoming a chef rather than going into one of the professions. All we can do is use the agencies and the partners with whom we work to ensure that we can pass on the message that there is a bright future. The greatest advantage of our business, which is also the greatest disadvantage, is that someone can

enter it with no qualifications and come out at the top as a general manager on £70,000 a year.

Brian Fitzpatrick: It strikes me that the best evangelists are the people who are actually running the businesses. As part of an earlier, more general entrepreneurial effort, David Murray tried to get young entrepreneurs to go to schools, particularly in disadvantaged areas, to tell young people that they had the option of becoming entrepreneurs. Do you envisage doing anything like that?

Denise Drummond: Springboard Scotland does that on our behalf. We believe that it does a good job so there is no need for us to duplicate that work.

Brian Fitzpatrick: Do you co-fund that initiative?

Denise Drummond: Yes.

Mr Macintosh: What is the relationship between your organisation, Springboard UK and the sector skills council? What is Springboard UK? Is it a Government agency?

Denise Drummond: Springboard UK is a charitable organisation that is owned by the industry and by a charity whose name I cannot recall at the moment. It has a mission to make hospitality a first-choice career. We have no relationship with it other than the fact that, as a co-ordinating body, we encourage and fund Springboard UK to do a job that is part of our remit.

Mr Macintosh: Will the sector skills council develop a Scottish arm or will your organisation fulfil that role?

Denise Drummond: I understand that it is developing a Scottish arm.

Mr Macintosh: I am still confused about your relationship to that body. Do you play a similar role to the sector skills council?

Denise Drummond: Yes, we do, but Tourism People works exclusively in Scotland whereas the Sector Skills Development Agency works throughout the UK.

The Deputy Convener: Would you like to make any further points?

Denise Drummond: No. I am delighted to have been here. If members wish to write to me with further questions, I will be happy to answer them.

Marilyn Livingstone: Could you keep us up to date with developments in relation to the SQA?

Denise Drummond: Yes, I will do that through the clerk.

The Deputy Convener: Thanks for coming. I

am sorry that the committee was sparsely attended. However, your information was helpful.

I welcome Marc Robertson, who is from the Hospitality Training Foundation, and Geoff Fenlon. I know that Mr Robertson is the HTF's manager for Wales, Scotland and Northern Ireland, but I seem to have mislaid the note about Mr Fenlon.

Marc Robertson (Hospitality Training Foundation): Geoff Fenlon is here as a member of the board of the Travel, Tourism Services and Events National Training Organisation. He is also part of the employer consortium that is putting together the bid for the new sector skills council.

The Deputy Convener: He sounds like a very impressive addition to the panel of witnesses.

We are very grateful to you for agreeing to give evidence to the committee. Normally we invite witnesses to make a few preliminary remarks, if they wish. However, given that you have made a written submission, you may want just to take questions from committee members.

Marc Robertson: I have something written down, but given that we are behind time I will make only a very quick statement.

The Deputy Convener: That is very understanding of you.

Marc Robertson: The Hospitality Training Foundation is a wholly owned charitable trust. It is owned by the British Hospitality Association, the British Beer and Pub Association and the Restaurant Association. It has been in operation for the past 30 years throughout the United Kingdom. As well as being a former national training organisation, it owns a very successful UK-wide awarding body called the Hospitality Awarding Body and a consultancy and training division called Stonebow. In Scotland we have operated very successfully over the past few years with only three members of staff. We hope to expand our staff in due course.

The HTF ceased to be recognised as a national training organisation in March this year, when the Government changed its priorities by creating skills councils and the Sector Skills Development Agency. It is not my intention to say much about the SSCs. Geoff Fenlon, who is part of the employer consortium, will do that.

Geoff Fenlon (Hospitality, Leisure, Travel and Tourism Sector Skills Council Steering Committee): I am here as a representative of employers. I am employed by the Edinburgh International Conference Centre and I am a director of the Travel, Tourism Services and Events National Training Organisation. Like the HTF, TIENTO was in effect disbanded in March this year. However, it continues to operate until the new sector skills councils are set up.

I sit on the employer consortium that is putting together the bid for the new sector skills council that will cover hospitality, leisure, travel and tourism. The SSDA, which the Government created to set up sector skills councils, has given us approval to move forward to the development phase of the new sector skills council. We anticipate that the council will come into operation in March 2003.

A great deal of discussion must take place during the development phase. We want to discuss how best to address skills issues without reinventing the wheel. We will set up a Scottish arm, just as we will set up arms in Wales, Northern Ireland and the regions of England.

There are several key differences between the new sector skills council and the national training organisations that Marc Robertson and I previously represented. The key difference is very much in line with the committee's Copenhagen experience. This is an employer-led and employer-driven initiative. The NTOs—both the HTF and TTENTO—were very successful in securing investment from the industry to move things forward. However, there was duplication and a lack of efficiency—different things happened in different parts of the UK. How we address problems on the ground varies from region to region and from area to area, but basically we face the same problems.

The SSC for hospitality, leisure and tourism will act as a clearing house. It will provide leadership and pull together for the first time tourism and the skills and developments that it requires. We will seek the best way of delivering those skills and developments, either through existing structures or by introducing new structures. I ask the committee to urge the Executive to support the new SSC. The Executive should support the SSC not only at a strategic level—the council will be set up by Westminster—but at a local level. The committee should encourage the Executive to assist us in providing delivery mechanisms and, more important, to participate in discussion about what is needed.

11:00

Andrew Wilson: From your evidence, I am not at all clear why we need a sector skills council with a clear Scottish arm and Tourism People, both of which appear to be doing precisely the same thing, albeit that you are employer or industry led.

Marc Robertson: I have responsibility for Scotland, Wales and Northern Ireland, as well as some additional responsibilities in England. The issues that the industry faces are UK-wide. One of the interesting aspects of my job is the mechanics of dealing with issues across the devolved nations.

The SSC will bring a UK-wide perspective to the issues and, as it will operate in a devolved context, it will be able to engage locally.

It is the Hospitality Training Foundation's aspiration to work closely with our partners, including Tourism People, to ensure that that happens. The sector skills council will have a number of products, including modern apprenticeships and vocational qualifications, which are offered by the NTOs at present. It will also have a remit to undertake labour market intelligence and skills foresight work alongside the work of a sector skills council in Scotland. The modern apprenticeship framework for Scotland, which I have just finished writing, is an example of that aspect of its work.

Andrew Wilson: What will you be doing that Tourism People is not doing or cannot do? In other words, what is Tourism People doing that you cannot do?

Marc Robertson: Tourism People has a broad remit whereas we will focus on the particular areas of vocational qualifications, vocational delivery, labour market intelligence and skills foresight work. We will engage with people on the ground to ensure that those products make a difference in the marketplace.

Andrew Wilson: Tourism People is doing that as well.

Geoff Fenlon: Although there are key differences, we should make no mistake that there will be large areas of overlap between the SSC, which has been set up by Westminster, and Tourism People, which has been set up by the Scottish Executive. In the period up until the SSC comes into operation, we need to decide what is best kept at UK level and what should be devolved.

For example, internet and information technology training is a UK-wide activity. However, as a result of the activities of bodies such as Scottish Enterprise, Scotland is further ahead in elements of that training than the regions in England and Wales, which means that some of the delivery and focus needs to be shifted in Scotland. That is where bodies such as Tourism People, with their specific remits, come into play.

As an employer, I have been working closely with Tourism People on bigthistle.com in order to push out industry recruitment and change other aspects of our business. That activity is particular to Scotland and to the needs of my own company. I have also been heavily involved in the Scottish tourism excellence programme. Scotland has some world-class venues that are excellent at training and development. Let us use those venues.

Tourism People provides a focus for the hospitality sector in Scotland. It enables us to identify the world-class venues and to put the people who want to be better managers where they can gain real experience. It is not possible to do that throughout the whole of the UK, but the size of the country makes it easy to do in Scotland.

The SSC will enable a partnership between Scottish Enterprise, Highlands and Islands Enterprise, the training agencies, colleges and Tourism People. Over the next few months, we will determine the best way of delivering that.

Andrew Wilson: Are you open-minded about that being delivered in Scotland by Tourism People on behalf of the UK-wide sector skills council or do you need another body to act as a Scottish arm?

Geoff Fenlon: We do not want to reinvent the wheel. Discussions are going on between the SSC and its potential partners. I am the chair of the sub-group that is discussing partnership arrangements in our sector. We kicked off that process in November. We want to do whatever the industry thinks works best, but we are doing so by looking at things through the eye of our customers. The key element for us is to examine what our customers are asking for today, tomorrow and in the future. We can then work on developing the skills that we need. We are totally open-minded about that.

The Deputy Convener: I welcome John Farquhar Munro, who has just joined us. He is the substitute member for Tavish Scott. I thank him for attending.

David Mundell: First, what do customers say is required? Secondly—on an issue that we have discussed generally—at the moment, provided that someone has the money, there is no barrier to their entry to the industry; they do not have to be any good at dealing with people, be able to cook or serve food, or whatever. How can that be combined with what you are doing, when anybody can just turn up and do it?

Geoff Fenlon: That is an issue that we cannot get away from. Our business is a people business and, as Denise Drummond said, the people are the biggest resource and the way in which they develop is key. That attitude has to start in the schools; Denise alluded to that, and we support it totally. The chairman of Springboard is part of the steering committee of the sector skills council. We will see how we would work within schools—that is still to be done by Springboard. The work of the steering committee has been hugely successful, but a lot more work needs to be done. We must change people's attitude. That is the key and that is what our customers tell us.

Our customers tell me that we are doing a fabulous job at the Edinburgh International Conference Centre. We undertake comparisons with other conference centres and we have found that there are two differences between the EICC and other conference centres: one is the attitude of our staff; the other is our professionalism. Those two things are lacking in some areas of Scotland and the UK and that needs to be addressed.

Marc Robertson: The industry is also saying that the qualifications for which financial support is offered—predominantly modern apprenticeships and vocational qualifications—need to be extended. Modern apprenticeships and vocational qualifications are great qualifications, but they are not the answer to every training need. The one-size-fits-all approach needs to be considered; other qualifications should perhaps be offered.

You talked about there being no barriers to entry to the industry. The current debate in the industry regarding the licence to practice concerns whether that is desirable for the industry. If it is desirable, we must consider how such a licence might be constructed and what might be the requirements for a licence to practice. For example, should we licence places or people? That debate needs to take place, and it is going on at the moment in scotexchange.net and the industry.

Mr Macintosh: Are you saying that, although modern apprenticeships are good, a wider range of qualifications is needed, or that the current flexibility needs greater support?

Marc Robertson: We could do more to increase flexibility in modern apprenticeships. The week after next, I will have a meeting with the Scottish Executive to discuss how we might do that, and hospitality will be one of the pilot areas in which we will explore that possibility.

There is a case for core skills' being delivered outwith a modern apprenticeship framework, in addition to their being level 1 or level 2 Scottish vocational qualifications. Those are issues that the industry might want to consider in future. Core skills are especially welcome in our industry because our work force has rather a low level of academic attainment. Core skills must be welcomed as a route for improving the situation.

Entry qualifications that are not SVQ-based—for example, food hygiene certificates, customer care courses and health and safety courses—could also be introduced, so that people who are getting a taster of the industry will go through three short courses to give them some basic skills. They can then perhaps progress to a modern apprenticeship or a level 2 SVQ.

Mr Macintosh: Is the barrier to increasing the training and skill level of the work force in Scotland

in the hospitality sector an attitudinal one, or is the barrier the range of qualifications and the support that is available from Government?

Marc Robertson: It is a combination of both. Denise Drummond is right to say that there is an attitudinal problem. My parents were horrified when I decided to go into the hospitality industry—they thought that I was making a duff choice. To a degree, that hurdle will always exist.

The Government-assisted suite of qualifications has limitations. For example, we must consider our approach to management education, particularly for small businesses, and the funding mechanisms that might support that work. At present, we offer people £5,000 to do a modern apprenticeship, but the financial support might not exist to help people who run small bed and breakfasts to develop themselves and their businesses. How can we engage with and support those businesses? The sum of £5,000 may not sound like much, but it is a lot to small operators—such an amount is a big investment for them to make. Perhaps they could be given some financial assistance to improve their businesses, which would improve the industry at the same time.

Geoff Fenlon: We have already started to make our way down that route. In my industry, we have set up an SVQ level 3 on the events side, but that is not sufficient for what we were looking for as far as management education is concerned. We have had an opportunity through the NTO, which we will continue through the SSC, to move that up to level 4. Use of the internet is key to deploying that qualification—that is where support is needed. We have used European funding to enable people to work from home to develop knowledge that they can apply to their work. That is the future for Scotland and we must support it.

Marc Robertson: Over the past four years, the HTF has in partnership with Thurso College been developing modern apprenticeships that are being delivered through the internet using learning support and assessment materials. What amazes me about the project is not that it has been successful—we always hoped that it would be—but that the kids get so much out of it, particularly 16 and 17-year-olds. They have greatly enjoyed their learning experience—much more so than those whom we evaluated who have undertaken modern apprenticeships through traditional mechanisms.

Tools such as information technology can revolutionise the way in which we deliver training, not only at skill level—levels 1 and 2—but at management level. Perhaps management development courses could be made freely available over the internet, so that people can start to develop their own skills and businesses.

Mr Macintosh: I am intrigued by the fact that those young people enjoyed the course. Why was that, and what was so special about the course?

Marc Robertson: They enjoyed the course because it was new and innovative and because we were doing things that, at that stage, had perhaps not been done before. For example, instead of watching someone truss a chicken, they watched a video that showed them how to do that. The course had lots of interactive elements, looked lively and colourful and was user-friendly. The students in our sample came from throughout the north of Scotland, so there was a good geographic spread. They worked closely together in teams, using IT as the classroom, if you like. Having started the project in one college, we now run it in five colleges. We hope that the project will continue and that it will start to make more of a difference in each of those colleges.

The Deputy Convener: Does John Farquhar Munro wish to ask any questions?

John Farquhar Munro (Ross, Skye and Inverness West) (LD): No.

The Deputy Convener: In that case, I thank the witnesses for their evidence and for accommodating the time constraints that we faced. We have managed to lurch back on to our timetable.

Subordinate Legislation

Late Payment of Commercial Debts (Scotland) Regulations 2002 (SSI 2002/335)

11:15

The Deputy Convener: On behalf of the committee, I welcome the Minister for Enterprise, Transport and Lifelong Learning to the meeting. We welcome the minister with particular warmth because it is his first appearance before the committee. It is perhaps unfortunate that he appears before us on what seems to be a significant and contentious issue. We are nonetheless grateful to the minister for making himself available at short notice. I also welcome back Lloyd Quinan, who will move the motion. Please bear with me, as I need to seek some procedural guidance from the clerks.

The procedure for the item is—not surprisingly—that Mr Quinan will be given time to speak to and move his motion and the minister will be given time to respond. We then move into open debate with the committee; members who want to ask questions are entitled to do so. When questioning has finished, the minister will be asked to sum up, Mr Quinan will also be asked to sum up and we will proceed without further discussion to a vote.

We recognise that this is a matter of substance. Will the minister say how much time it would be helpful for him to have to respond?

The Minister for Enterprise, Transport and Lifelong Learning (Iain Gray): Two or three minutes will be enough time.

The Deputy Convener: Is that sufficient? I am prepared to allow you a little more time. I think that Mr Quinan may require a little more time to speak.

Iain Gray: Let us say five minutes, if that is acceptable.

The Deputy Convener: Okay. How much time would Mr Quinan like? I have to make a decision; there are no rules about this.

Mr Quinan: I believe that five minutes will be adequate.

The Deputy Convener: Okay. I rule that Mr Quinan will have five minutes to speak to his motion and the minister will have five minutes to respond. The open debate will then take place. Its duration will depend on the number of questions that are asked and the issues that members wish to pursue.

Mr Quinan: I believe that each member of the committee has been furnished with a copy of the letter from the president of the Law Society of

Scotland to the Minister for Enterprise, Transport and Lifelong Learning about the matter. Most of what I have to say is contained within the letter. I will provide a little bit of background for members who were not here earlier.

It was communicated to me last week that there were potential problems with the statutory instrument. As I am a member of the European Committee and the Audit Committee it became clear to me when I looked at the instrument that there were potential pressures on audit and on the consolidated fund from the introduction of interest payments, particularly with regard to the Scottish Legal Aid Board. That was the audit-related concern. The secondary concern—a parliamentary one—is that we are again dealing with a European directive about which the assumption has been made that we will pass the instrument to fit a time scale. I took part in the sift at which the document was considered in the European Committee some months ago and we did not consider those concerns. There are lessons to be learned for us all as members of the Parliament.

On the substantive issue, the new section 2A that the instrument would add to the Late Payment of Commercial Debts (Interest) Act 1998 appears to create a distinction between advocates and barristers, but there is no strict distinction; both receive honoraria and are not under contracts. To support that I will read proposed new section 2A as it will apply in Scotland. There is no new section 2A to apply to England, Wales or Northern Ireland. It might answer members' questions if I read out the proposed new section 2A, which relates to the application of the act to advocates:

"The provisions of this Act apply to a transaction in respect of which fees are paid for professional services to a member of the Faculty of Advocates as they apply to a contract for the supply of services for the purpose of this Act."

The letter from the Law Society contains a quotation from a rather famous judgment by Lord Inglis in 1876, which defines the relationship that advocates have with their clients. That relationship does not involve any nature of contract. On 27 August 2002, a law lord confirmed that statement in a court case.

Under the 2002 scheme, an agreement exists between the Law Society, the Faculty of Advocates and the judiciary. Negotiations went on for more than a year and an amicable settlement was reached. The 2002 scheme covers all the issues that would be disturbed by SSI 2002/335.

The responsibility for the late interest payments will lie with the solicitor. Although the advocate will have no contractual responsibility, the financial responsibility will fall on the solicitor. That situation needs to be examined. There is also a question about whether inclusion of section 2A in the SSI is

ultra vires, because it goes beyond the powers of the original act.

The Subordinate Legislation Committee should have considered the financial implications, because it is that committee's responsibility to examine anything that might have an impact on the consolidated fund. If we had a situation in which interest of 8 per cent became payable on advocate fees after 30 days, that would mean that there would be budgetary pressures on the Scottish Legal Aid Board, which pays such fees to advocates through solicitors.

I ask the committee to support motion S1M-3468 for the reasons that I have outlined and on the basis of my statement about the lessons that members of the Parliament must learn. There is great likelihood that the requirement will move to a judicial review. During committee meetings and full meetings of the Parliament, I have said that it is not sensible for us to enact law that requires confirmation by the courts.

I move,

That the Enterprise and Lifelong Learning Committee recommends that nothing further be done under the Late Payment of Commercial Debts (Scotland) Regulations 2002 (SSI 2002/335).

Iain Gray: We find ourselves in such a position because the Executive has a statutory duty to implement European Union directives. The directive in question—directive 2000/35/EC—concerns late payment in commercial transactions.

It is our view that, in any case, advocates would be covered by the terms of the late payments directive. Proposed new section 2A, which is in SSI 2002/335, represents an attempt to ensure that that position is made clear. The situation in England is different, because it is possible for a barrister in England to enter into a contract. It is not possible for an advocate in Scotland to do so. The instrument seeks to give advocates the protection of the directive. If the instrument were to be annulled, we would be in breach of the directive. Therefore, the Executive urges the committee not to agree to Mr Quinan's motion.

There is no reason in principle for advocates to be treated differently in having legislative protection to ensure timeous payment of what is due to them. We do not believe that the instrument would alter the relationship between the advocate, the solicitor and the client, which is referred to in the 1876 case. The directive covers commercial transactions as well as contracts. It is clear that we are dealing with a commercial transaction and there is no implication that the transaction in question is a contract. It seems to us that there is no argument in principle for why the measure should not apply to advocates. We can provide clarity that the measure applies to advocates and I

say to Mr Quinan that we should avoid the point being left moot and having therefore to be decided judicially later.

When the committee considered the regulations previously, it did not comment or make a recommendation on them. To support Mr Quinan's motion on the regulations would be to reverse a de facto decision that the committee has taken on the regulations.

Mr Quinan made a point about the procedure for dealing with negative instruments. It is not appropriate for me to comment on that now. It is unfortunate that we come to the matter late in the 40-day period for consideration of the regulations. If that poses a problem, the committee might want to raise the matter with the Procedures Committee. Nonetheless, we must work with the existing procedures. On the basis of clarity and the decisions that the committee has already taken, I ask the committee to oppose Mr Quinan's motion.

The Deputy Convener: I have some points to make as convener. It is true that no advice was proffered to the committee when the instrument came before it. Indeed, the instrument was presented as a benign and almost technical measure that required endorsement. However, the motion raises a substantive issue and the committee has no alternative but to consider it. In defence of the committee, I point out that we did not have the benefit of legal advice when we considered the instrument previously.

I will exercise my prerogative as convener to ask a question. As I understand the present situation, an advocate cannot sue for fees. Given that, I am not clear about the relevance of including in the regulations a right for advocates to claim interest on outstanding fees. Will you comment on that, minister?

Iain Gray: Our understanding is that, in the modern situation, an advocate's ability to sue for fees is a moot point.

The Deputy Convener: Is the minister aware of any instance in which an advocate has sued for fees?

Iain Gray: That has not—to my knowledge—happened.

The Deputy Convener: I raise the point because you referred to timeous payment, which is what the instrument is all about. It seems to me that there is a paradox. If the professional practice is that advocates do not sue for fees, a question of timeous payment cannot arise because the advocate has no legal sanction available to enforce timeous payment.

Iain Gray: I appreciate that. My answers to your previous questions are again relevant.

Andrew Wilson: What is the implication of being in breach of the EC directive?

Iain Gray: The implication is, I presume, that we could lay ourselves open to infraction proceedings.

Andrew Wilson: Is that a presumption or the actuality?

Iain Gray: The European Commission would decide whether to proceed with infraction proceedings, but we would be open to such proceedings.

Andrew Wilson: Are you sure that the proceedings would be against the Scottish Executive, or would they be against the UK Administration?

Iain Gray: They would be against the UK Government.

Andrew Wilson: So there are no implications for the Scottish Executive.

Iain Gray: We have a statutory duty to implement European Union directives and we would be in breach of that duty.

Andrew Wilson: That is understood. Your case seems to rest on the interpretation of commercial transactions. The evidence from the Law Society of Scotland is that it does not consider the word "transactions" to cover advocates fees. How do you respond to that? I assume that you have the letter from the Law Society.

Iain Gray: I do not think that the letter addresses the question whether the arrangement by which an advocate is paid fees is a commercial transaction in terms of the directive. The letter states:

"We do not consider that the use of 'transactions' in the Directive is intended to cover Advocates' fees".

However, it does not seem to explain that reasoning. The case to which it refers deals with the question whether a contract of employment arises, but it does not offer guidance as to whether a commercial transaction is involved. In my view, the letter does not address that question.

11:30

Andrew Wilson: The Law Society contends that adding a reference to advocates could make the instrument ultra vires. Your contention is that the 1998 act implicitly covered advocates anyway, and that you included the reference simply to make things clear. Is that correct?

Iain Gray: We believe that, because the directive covers commercial transactions, it would cover advocates' fees, although the question would be moot. Therefore, for the sake of clarity, we inserted proposed new section 2A. We do not

believe that that is ultra vires; if we did, we would not have presented the SSI to the committee.

Andrew Wilson: My only other comment is that the instrument raises serious questions about the resourcing of the Subordinate Legislation Committee—and other committees that scrutinise statutory instruments—in terms of advice that we can receive on legal matters. That ought to be addressed by the conveners liaison group.

The Deputy Convener: That point is noted, Mr Wilson.

Brian Fitzpatrick: I plead doubly guilty. I sit on the Subordinate Legislation Committee, and agree that Andrew Wilson's point about how SSIs—or at least some of them—come before us is pertinent. I agree that the matter should be raised with the conveners liaison group.

I share the minister's view that it is not clear that it is trite law that advocates in Scotland cannot sue for their fees. I can think of only one case in which that was done to no resolution.

Iain Gray: I fear that that is one more case than I could think of.

Brian Fitzpatrick: It does not help us in any event. I seek clarity with regard to the fact that the vehicle that the principle act uses is that of contract, which takes us to the nub of Lloyd Quinan's position, in so far as we appear to have moved from a vehicle of contract to a vehicle of commercial transaction.

What is in the mind of the Executive with regard to the relationship between counsel, solicitor and client? Is an attempt being made to suggest that such recourse is in the order of a commercial transaction, or is the idea simply to provide some bolstering of counsel's position in relation to long-outstanding debts, which is a feature of the Scottish bar on which we might have wanted to take some evidence—for example, from Faculty Services Ltd, which acts as a collecting agency for the Faculty of Advocates?

Iain Gray: We have no intention of using this SSI to change in any way the nature of the relationship between counsel and client. It is our view, however, that advocates enter a commercial transaction and are, in essence, small businesses that provide services in return for fees. Therefore they, like other small businesses, should be covered by the protection of the late payments directive. Businesses generally receive that protection. There is no intention either to comment on—except in passing—or to change or influence the nature of the relationship between advocates and their clients.

Brian Fitzpatrick: I note the references to the position of the profession in the south. The directive applies throughout the European Union.

Can you assist us as to the position elsewhere in the union as far as advocates are concerned?

Iain Gray: I cannot, although I can confirm that the directive is an EU-wide directive. The presumption would be that, where there is a commercial transaction, the protection would be available.

Brian Fitzpatrick: I take the point about the importance of supporting our obligations in order to comply with the directive. Am I right in thinking that, in the event that we caused the United Kingdom to be in breach of the directive, there would be implications for the Scottish Executive in connection with any infraction proceedings?

Iain Gray: I understand that, if a penalty were to be imposed under infraction proceedings as a result of our action here, the responsibility for that penalty would lie with us.

The Deputy Convener: Did I understand you to say that the inclusion of new section 2A in the 1998 act under the instrument before us was not an inadvertent mistake, but a deliberate act?

Iain Gray: Yes—it was an act of clarity.

The Deputy Convener: Yet there seems to be agreement that an advocate's position in relation to a client, particularly that which obtains for fees and recovery of fees, is a moot point.

Iain Gray: Yes.

The Deputy Convener: Is it not extraordinary that the committee was not proffered advice when considering the instrument?

Iain Gray: My understanding is that the factual advice around the instrument, including the issue in relation to advocates, was included in the note. I am not sure whether you are asking why the committee was not given the legal advice that was made available to the Executive. Procedurally, that would have been unusual.

The Deputy Convener: My concern is that the committee was presented with an instrument, which purported to be a technical instrument that was benign in intent. However, it now appears that the instrument deals with an issue that everyone appears to agree is a moot point, which is whether the relationship between advocates and their clients is a commercial relationship or a contractual relationship and whether it involves a legal right to recover fees. If that is a moot point, it seems strange that specific reference would be made to the issue in the regulations but the attention of the committee would not be drawn to it.

Iain Gray: We do not believe that the substantive point in the statutory instrument is moot. We believe that the relationship is a commercial transaction that is covered by the

directive. In answer to an earlier question, I said that the point that we believe to be moot relates to whether it is possible for an advocate to sue for return of fees. That lies outside the technicalities of the instrument.

The Deputy Convener: I do not wish to be picknickety, but I think that it is hard to define a commercial transaction unless the parties within that transaction have a legal relationship between them, which would ultimately involve the legal right of one party to recover something from the other. That is implicit in the nature of a commercial transaction. I do not require you to comment on that view; I am merely stating it.

Marilyn Livingstone: Will the minister comment on Lloyd Quinan's point about the pressure on the legal aid system?

Iain Gray: The Scottish Legal Aid Board has not expressed any concern about that. The point of principle is that we are creating a protection to ensure that payments are made on time. SLAB should be required to make payments on time. That seems right and proper.

Mr Macintosh: Did you say that regulations relating to the late payment of commercial debts apply to barristers in England because they have entered into a contract?

Iain Gray: Not precisely. I said that it was open to barristers in England to enter into a contract, but that it was not open to advocates in Scotland to do so. That means that it is possible for barristers in England to avail themselves of the protection of legislation that depends upon the existence of a contract.

Mr Macintosh: In other words, barristers were not left out of the legislation in England; they can be covered by the legislation if they choose to sign a contract and use the legislation to cover them in late payment situations. The reason why there is a specific reference to advocates in the instrument is because of the rather anachronistic law surrounding the relationship between advocates and their clients.

Iain Gray: Whether the law is anachronistic is a debate for another time. The law is different. The situation is different, so our approach is different.

Mr Macintosh: Is the idea to give advocates the protection of the law?

Iain Gray: Yes.

Mr Macintosh: Barristers in England already enjoy the protection of the law, if they choose to exercise it.

Iain Gray: Yes.

Brian Fitzpatrick: I will make two points about the Scottish Legal Aid Board. It strikes me that the

answer to concerns about any onerous imposition on the block might lie in the circumstances in which sums due from the Scottish Legal Aid Board to counsel constitute a qualifying debt. One would work out what was a qualifying debt not from these regulations, but from the civil legal aid regulations or the criminal legal aid regulations, because when a civil advocate or an advocate practising in the High Court completes a portion of work on a litigation or advice on a litigation, that sum will not become immediately due.

In a legal aid transaction, there are various stages at which sums might become due or not due. I do not know whether the minister's officials can assist us on that. Regulation 2(4) shows that it seems to be expected that circumstances will arise in which statutory interest will not be exigible in respect of transactions that have been specified by Scottish ministers.

In relation to Lloyd Quinan's comments, I say—more as an observation than as a question—that arrangements exist for sums that fall due to counsel if counsel is appointed to the shrieval bench or to the supreme court bench. That relates to the point on article 6 of directive 2000/35. I do not want to give legal advice on that, but I would not consider the fact that appointed counsel might have a direct interest to be as substantial an interest as might be thought. The situation inevitably arises in circumstances in which a person is paid after the event and becomes a sheriff or a judge.

David Mundell: Infraction proceedings are a bit of a red herring in the short term. How many times has the Commission instigated infraction proceedings? Under what time scale has it operated?

Iain Gray: I do not know. The Executive has a statutory duty and it would be wrong to argue that we should not fulfil that duty on the basis that it might take a long time for the European Commission to respond. The statutory duty is the principle.

David Mundell: Surely all that our duty involves is ensuring that directives are implemented appropriately. The Executive has the power and the duty to choose the appropriate way to implement directives on reserved matters, provided that we are broadly compliant. Given that the issue has arisen, would not it be better to annul the measure, resolve the issues, then implement a measure that is right, rather than to say, "Oh well, we are going to be in breach of the directive"?

Like Mr Fitzpatrick, I have been a member of the Subordinate Legislation Committee. Numerous directives have been implemented late for all sorts of reasons and we have not had infraction

proceedings. Usually, we are given the message that the Executive wants to take more time to get the legislation right. Would it not be better to take more time to get it right?

11:45

Iain Gray: Performing our statutory duty as best we can is important and that is what we seek to do. If the statutory instrument that is in force is annulled, we will be in breach of the directive.

It is clearly the case that issues around the statutory instrument and the implementation of the directive have arisen very late in the procedure and I appreciate the position that that has put the committee in. I would be willing to suggest an alternative to Mr Mundell's approach. If the committee were willing to reject Mr Quinan's motion, in order to allow our statutory duty to be discharged, I would be willing to return to the committee at a later date when the committee and I have had time to consider the substantive issues. That would not leave us in breach of the directive but would give us the opportunity to revoke the instrument at a later date if that were the wish of the Parliament.

The Deputy Convener: Would I be right in inferring that you detect that there is an issue?

Iain Gray: I have argued that we believe that the instrument is correct and that it will implement the late payments directive in a way that is appropriate in Scotland. However, I have to acknowledge the fact that the committee is concerned about some of the issues that have been raised. We are obliged to take account of that. I ask the committee to consider allowing the statutory instrument to remain in force if I give an undertaking to return to the committee to discuss the issues further at a later time.

The Deputy Convener: Would you be minded to undertake to return to the committee within, say, three months to give further evidence on your department's thinking on the issue?

Iain Gray: That would seem to be reasonable.

Andrew Wilson: I welcome the minister's suggestion, but I think that it would set an enormously unhelpful precedent for the Parliament as the legislative arm of government. If the Parliament were to let an instrument become statute and allow the Government to come back to Parliament when it had considered the situation further, we would have absolutely no formal sanction and could take no formal position that could influence the Government beyond declaring that we hold an opinion.

The minister's position is clear and I agree that the situation is troubling. I am not clear about why we should not pass Mr Quinan's motion today, as

that would give us a chance to debate tomorrow the issues that have been raised more fully in Parliament. I am not satisfied that the minister has answered in full the points that have been raised, as he appears to be in some doubt.

If the Parliament annuls the statutory instrument and passes it back to the Executive for amendment and the Executive then brings it back to the Parliament for approval, what would be the problem from the European Commission's point of view? Given that it would be able to see that we were merely trying to tidy up an unfortunate mistake in the legislation, why would there even be an issue of infraction? It would be clear that the intention of the legislative and executive arms of government was to pass the European Commission's directive and that we were trying to find the best way to do so. There is no issue at stake. Is there a time limit with regard to the directive?

Iain Gray: My understanding is that there is a period of 40 days in which to annul a negative instrument. That 40-day period expires tomorrow.

Andrew Wilson: I was talking about a time limit for the directive, not the instrument. By what date do we have to have the directive fully incorporated?

Iain Gray: By 8 August this year.

Andrew Wilson: So we are already late?

Iain Gray: No. The statutory instrument is already in force; the motion is to annul it.

The Deputy Convener: I believe that the instrument came into effect on 7 August.

Mr Macintosh: I am conscious of the fact that we are debating the motion to annul the statutory instrument as if the only thing at stake is whether the European Commission will take action against us. The convener referred to the legislation as benign. Far from being benign, the measure is very beneficial. It will benefit the huge number of companies in Scotland that suffer from the late payment of commercial debt. We should be pleased that we are agreeing to this law.

It is obvious that, having thought the matter through, the Executive has found that there is an issue with the non-contractual arrangements that advocates currently enjoy. The Executive has tried to address that issue. The minister has promised to come back to the committee after giving the matter further consideration. The instrument will certainly do a lot of good for many companies in Scotland. For that reason alone, we should support it.

The Deputy Convener: That is why I described the instrument as benign, but let us not get into a semantic exercise.

Mr Macintosh: Calling the instrument benign implies that it is impassive or that there is a lack of action.

Brian Fitzpatrick: I suspect that the Faculty of Advocates would suggest that the effect of not getting paid is not benign, but that is a different matter.

I welcome the minister's suggestion. Unlike Andrew Wilson, I feel that there is a strong tension because of competing demands. I do not start from the operating principle that we as a lawmaking body should put ourselves in breach of our obligations as part of a member state, which might mean that we have to face up to the consequences in the event of early or late infraction proceedings. It would be unhelpful if the committee were to establish that precedent today.

However, I am troubled by the tension in the opening preamble of the directive. Recital (19) makes it clear that

"Where an agreement mainly serves the purpose of procuring the debtor additional liquidity at the expense of the creditor, or"—

this is the more conventional case—

"where the main contractor imposes on his suppliers and subcontractors terms of payment which are not justified ... these may be considered to be factors constituting such an abuse."

That is an important point.

The first page of the statutory instrument makes it clear that it affects advocates. As a committee, we need to own up to the fact that we did not notice that. Albeit that the instrument came through as one of a series of SSIs, I did not notice it—*mea culpa*—nor do I hear anyone else saying that they noticed it. The Subordinate Legislation Committee certainly did not seem to notice it.

However, the regulatory impact assessment makes it quite clear that the instrument is directed towards invoices of small to medium-sized enterprises and that it proceeded on the basis that advocates were considered to be such enterprises. Yes, an advocate is a small to medium-sized enterprise, but he would not necessarily see himself in those terms.

The arrangements need to be explored. Perhaps we might be able to do that with the representatives who are here from the Law Society of Scotland and the Faculty of Advocates. A key feature of the regulatory impact assessment and of the regulations themselves is that they allow not only for statutory interest but, in effect, for a fixed-sum civil penalty to be applied. That is an important point, because such penalties could have a worrying impact on the relationships between solicitor and client and between solicitor and counsel.

No mention seems to be made of the arrangements between the Scottish Legal Aid Board and Faculty Services Ltd. One feature that drives the civil penalty is the attempt to ensure that small and medium-sized enterprises are not put to the additional cost of setting up a series of sophisticated arrangements to track what is happening with individual payments because of routine non-payment by particular clients. Personally, I do not know what the faculty's arrangements are either internally or with solicitors or the Legal Aid Board. I am some distance from it. It is quite clear from the regulatory impact assessment that the issue has never been addressed.

The consultation paper that the Executive published back in July 2001 elicited seven responses, five of which were about implementation. The responses were mainly from trade associations and interested parties. Perhaps the minister will be able to assist with this question, but I do not understand why the Law Society, the Faculty of Advocates and the Scottish Legal Aid Board, which is an arm of Government, are not included in the respondents.

I welcome what the minister has said. It is evident that there are competing tensions, which we must address.

Iain Gray: The Faculty of Advocates was a respondent to the consultation paper.

Brian Fitzpatrick: It was? I am sorry.

Iain Gray: We have discussed many of the substantive issues at some length. I have given an undertaking to return to the committee within three months to discuss the matter further. I ask the committee to reject Mr Quinan's motion.

In many ways, Mr Macintosh made the most important point. The principle behind the directive and its implementation in Scotland and in the UK is to provide protection for those who are owed money and to ensure that the money is paid to them timeously. I repeat that the SI is in force and that, if it were annulled, we would be obliged to consider European Commission infraction proceedings. It is rather more important to note that many businesses in Scotland would not have the protection of the law while we decided how to proceed.

Although I take seriously the concerns that have been expressed about the position of advocates, they would seem to be disproportionate to the situation. I ask the committee to reject Mr Quinan's motion on the basis that we will revisit the matter. I will return to the committee to discuss the instrument further.

Mr Quinan: The situation that we are discussing has been described as a moot point. The question

is whether advocates can sue for a fee when the accepted norm is that they do not do so. The norm is for moot points to be settled in court. The minister has supported my view that the situation runs the risk of provoking judicial review.

I refer the committee to a letter from Richard Morgan, the Department of Trade and Industry solicitor who prepared the initial instrument, in which he writes, with regard to the application of the directive across the UK, that it was not anticipated that the equivalent regulations south of the border would apply to barristers in England, Wales and Northern Ireland. The reason for that is that barristers are retained and are paid an honorarium rather than being party to a contract, whereas there is a perception that engaging Scottish advocates is tantamount to forming a contract, for which advocates receive fees. The result of that is to create an anomaly in the regulation of equivalent professions in Scotland and in the rest of the UK. That appears odd, given that the EU directive seeks to harmonise payment periods across the EU. We are not following the letter of the EU directive.

The minister singularly failed to answer the question whether the solicitor or the client will make the payment of interest. The instrument includes the word "transaction" in the first line of section 2A, which is a word that does not exist in the SI for the rest of the UK. The SI also includes a reference in the last line of section 2A to

"a contract for the supply of services for the purposes of this Act."

The substantive point is the reference to a "contract" and not a "transaction". Advocates do not enter into contracts, which makes the use of the word "contract" irrelevant. The minister's suggestion that we consider the situation again in three months is an indication of what lies behind the instrument.

12:00

The Deputy Convener: You have one minute remaining, Mr Quinan.

Mr Quinan: The note that the Executive gave to the committee contained an apology for the late delivery of the directive. This is a red herring. Rejecting this instrument, which could be replaced within a week by another SI that would do what the minister is offering to do in three months, would be the sensible way to proceed, rather than moving to law and throwing the baby out with the bath water. Yes, it is important to every SME, individual and small business in the country that the SI is enacted quickly, but we should not enact a piece of law on the basis that we disadvantage another section of society.

There is no requirement for the legislation; the Faculty of Advocates does not require it. As every

member of the committee knows, the Law Society of Scotland has made it very clear that it believes that the SI will require to go to judicial review. As I have said before, if we make a law that requires confirmation in the courts, it is a bad law.

Brian Fitzpatrick: On a point of order, convener, I know that our arrangements are rather ad hoc and I do not mean to criticise Mr Quinan, but it is unhelpful to introduce new material that cannot be tested when summing up. We do not know the whereabouts of the letter—seemingly from someone at the DTI—that was adduced in the summing-up and which contains a rather extraordinary proposition. We do not have a context for the letter. That is not a comment on the presentation of the case; it is more a comment on the circumstances in which we find ourselves when a matter comes before the committee late.

I also do not think that it is in order for a member, when summing up, to put a gloss on the provision. I am sure that, on reflection, Mr Quinan will notice that section 2A attempts to equate the position of professional services. It does not suggest that there is an equivalence between professional services and a contract. That is quite clearly the position.

The Deputy Convener: The point of order is genuine if it refers to the procedure adopted by an individual in summing up. My view is that Mr Quinan's reference is indeed circumstantial at best and does not touch on the germane substance of the debate to which the committee has been able to listen. I propose to find that Mr Quinan's summing up is acceptable, although Mr Fitzpatrick is quite right that we are working with ad hoc proceedings, which is never easy. I am sure that his remarks will be helpful if there is any need for the procedures to be repeated in future.

I thank everyone who has contributed to the debate. We now come to the vote. The motion is very simple and is as tabled under agenda item 5.

Andrew Wilson: I beg your pardon, but could you clarify whether voting that nothing further be done means that we do not send the SI to the Parliament or that we do?

The Deputy Convener: If you vote for Mr Quinan's motion, and that is the majority view of the committee, the decision moves on to the Parliament. If you vote against Mr Quinan's motion, and that is the majority wish of the committee, the matter dies.

Simon Watkins: To vote that nothing further be done with the instrument means that it would fall.

Andrew Wilson: I am obliged.

The Deputy Convener: The question is, that motion S1M-3468, in the name of Lloyd Quinan, be agreed to. Are we agreed?

Members: No.

The Deputy Convener: There will be a division.

For

Munro, John Farquhar (Ross, Skye and Inverness West) (LD)

Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Goldie, Miss Annabel (West of Scotland) (Con)

Livingstone, Marilyn (Kirkcaldy) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)

ABSTENTIONS

Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)

Mundell, David (South of Scotland) (Con)

The Deputy Convener: The result of the division is: For 2, Against 3, Abstentions 2.

Motion disagreed to.

Mr Quinan: On a point of order, convener. Is it appropriate for the convener to vote, except in the case of a tied vote?

Simon Watkins: Yes, the convener has the right to vote.

The Deputy Convener: I confirm that our report to the Parliament based on our previous discussion of the statutory instrument stands.

I thank all members for contributing to the discussion. I particularly thank Mr Quinan and the minister for attending to address the issues under consideration. Before I leave the item, I say to the minister that I hope that he will be cognisant of the observations that he made to the committee. The committee will certainly expect a response in the not-too-distant future.

Iain Gray: By all means.

12:06

Meeting suspended.

12:13

On resuming—

Budget Process 2003-04

The Deputy Convener: Item 6 is the budget process. This is the stage at which the committee can take evidence from the Minister for Enterprise, Transport and Lifelong Learning, Mr Gray, and ask him questions.

I am sure that I am not alone in saying that we all feel as though we have been dragged through a mangle backwards this morning. I am pretty confident that members will want to deal with this item as swiftly as is effectively possible. The minister has offered to forgo an opening statement; he simply invites members to ask him questions. That is immensely helpful and I thank him on behalf of the committee.

Andrew Wilson: I hope the minister will be able to refocus on the budget process after a difficult session earlier in the meeting. My questions are on the priority given to the economy and enterprise, which were the subject of the statement by the Minister for Finance and Public Services following the comprehensive spending review. The evidence that we have had from our adviser makes interesting reading. Over the four-year period in question, the total enterprise and lifelong learning budget falls in real-terms by just over 1 per cent. The equivalent for the regional development agencies in the rest of the UK rises by 4.5 per cent and the trade and industry budget across the UK rises by just under 3 per cent. Given that the minister will agree that our economic performance relative to the rest of the UK is poor and getting worse, what are the implications of a budget scenario that shows a reduction in investment in enterprise when the rest of the UK is increasing it?

12:15

Iain Gray: My concern in taking the budget through the Scottish budget and spending review processes is less about a comparison with the rest of the UK or anywhere else and more about our priorities for getting Scotland's economy growing, and about the important dialogue that we have with business, trade unions and other stakeholders.

I have a portfolio budget that also includes transport. It is a mistake to look solely at the enterprise and lifelong learning budget as a whole. There are two reasons for that. It has been clear to me in the five months or so that I have been in the job that there are two particularly important things that those who have direct, day-to-day concerns

about doing business in Scotland and growing that business want to raise with us. One is transport infrastructure; the other is business rates. The spending review responds to those priorities. We are freezing business rates, which takes £35 million to £40 million of business costs out every year. If you look at my portfolio as a whole, you will see that the winner, as it were, is transport, where there are significant increases in spending—a 52 per cent cash increase across the Scottish budget period.

Higher and further education are of enormous importance to us because of the science and skills agenda, so they also do well in the Scottish budget. The budget lines on the enterprise network are more or less held in cash terms, so the comment that that amounts to a real-terms reduction across the period is fair. What has to be factored in, however, is the release of some £45 million per year over that period by the business transformation project, which I believe will secure the key priorities for Scottish Enterprise and Highlands and Islands Enterprise through intermediary technology institutes, project Atlas—accessing telecoms links across Scotland—and broadband.

We have five priorities, one of which is jobs. It is quite wrong to look at the enterprise and lifelong learning budget as the only budget that contributes to maintaining and creating employment in Scotland. There is enormous investment in our economy through investment in housing in Glasgow, in the rebuilding and reprovisioning of schools and in the transport infrastructure improvements that will come through the budget settlement.

Andrew Wilson: I thank the minister for a very full answer, but I feel that he did not answer the question that I asked. I am not suggesting for a minute that the enterprise budget is the only one influencing the economy, but my first question was whether he recognises, as the First Minister has, the need to close the wealth gap between Scotland and the rest of the UK.

My second question was about the implications of the levels of investment in enterprise, transport and education, which are receiving less of an increase here than elsewhere. What is stark about enterprise funding in the budget is that it is falling when such funding is increasing in the RDAs and in the UK as a whole. Does that not suggest that, in terms of the Government's own intervention—purely in budgetary terms—the contribution gap will get wider rather than narrower?

Iain Gray: Our primary purpose is not to narrow the gap between Scotland and the rest of the UK, but to get Scotland's economy growing in a way that meets our aspirations. Our aim is to move growth towards the upper quartile of the OECD

table. To do that, we are taking a number of approaches. I mentioned the intermediary technology institutes—ITIs—and the investment we are making in FE and HE. The Scottish budget decisions reflect our primary purpose. That is far more fundamental to us than an obsessive comparison of the budget decisions that are taken in Scotland and in the rest of the UK, some of which I would not accept.

In transport expenditure, the increases over the next three years compare favourably with the UK figures, but that is not our primary purpose, which is to invest in growth in Scotland and ensure that the resources necessary to make that work are available.

Andrew Wilson: Given the revelations in this morning's *Business a.m.*, what are the implications for the improving regulations in Scotland—IRIS—unit's budget? It appears not to have produced a great deal in terms of results. Is a significant amount of money involved? What is the Executive doing in the light of that report?

Iain Gray: The IRIS budget is not significant in terms of the overall budgets that we are discussing. The accusation in this morning's *Business a.m.* was that IRIS has produced nothing over a period of time. I disagree. IRIS has done work over that period and it has produced the enforcement concordat, for example. I would like us to do more on business regulation and its impact. It is an area that I hope to consider, to ensure that the unit does not waste away, as was suggested in this morning's accusation, but instead finds a way to operate more effectively on behalf of Scottish business. The IRIS budget is not a significant aspect of the enterprise and lifelong learning budget.

Andrew Wilson: Your answer to the criticisms is that IRIS has done work over the past three years but that it has not yet produced a specific output.

Iain Gray: The question was about the budget for IRIS. The budget for IRIS covers the running costs for that unit in the Scottish Executive, and those running costs are very small.

Andrew Wilson: The point is that there are no outputs from it.

Iain Gray: There are some outputs, such as the enforcement concordat.

The Deputy Convener: I must apologise to your colleagues, minister. I failed to introduce and welcome Mr Weeple, Ms Morgan and Mr McCrone.

Before we leave IRIS, could you tell us whether you believe it is competent for IRIS, if it is to continue, to consider regulations emanating from Europe or Westminster that affect business in Scotland?

Iain Gray: The purpose of IRIS is to examine how regulation impacts on business, so it is certainly within its competence to consider how those regulations are applied. For example, it could look at how regulations could be applied in a way that is less burdensome to business. If the question is whether IRIS can, in and of itself, remove regulations that lie with Europe or Westminster, the answer would clearly be no, but I shall give an example.

A series of fairly big events is now taking place around Scotland—I attended one in Dundee. They are led by HM Customs and Excise, deal with regulation—particularly value added tax—and bring together Scottish and devolved Government agencies involved in regulation and UK departments such as the Inland Revenue, to give business the opportunity to discuss face to face with those departments how regulations are applied.

IRIS has been involved in a series of workshops and road shows around Scotland to discuss how regulations are applied. The enforcement concordat looks at a more consistent regime, particularly for regulations that are enforced by local authorities. A great deal of IRIS's work concerns the way regulations are applied rather than the regulations themselves. It is my belief that many of the regulations could be applied more consistently and in ways that might prove less of a burden for businesses and for small businesses in particular.

The Deputy Convener: If we are to avoid the perception that IRIS has been flung on the compost heap, it is clear that it must develop a more defined role.

Iain Gray: IRIS works in an important area where we could, and perhaps should, be more successful. I certainly intend to pursue that work.

David Mundell: In "Building a Better Scotland", the budget heading "Enterprise and Lifelong Learning Other" rises quite markedly from £66 million to £120 million. Will the minister clarify what that heading encompasses and why the figure rises so much?

Iain Gray: The heading "Enterprise and Lifelong Learning Other" encompasses a large number of relatively small budget headings. We will have some clarity on that once the level 3 figures become available at the end of this month.

There are two reasons for the jump. The budget line includes the quite significant sum that is required to roll out educational maintenance allowances across Scotland. It also contains the resources that are to be made available to implement the recommendations of the working group on enterprise and education. That amounts to some £40 million over three years.

David Mundell: I also have a couple of questions about the increases in further education funding and higher education funding, which are highlighted in the figures in "Building a Better Scotland". Can the minister give us a flavour of what the additional funds will be spent on and of the context in which they will be spent?

Iain Gray: The context for the increase in funding for further education is that FE funding has increased by 50 per cent during this session of the Parliament and student enrolments have increased by some 60,000. That is a significant expansion in volume.

There is a different context in higher education, although it is related in a way. We have now reached the point where 50 per cent of 18 to 21-year-olds participate in higher education. Some 25 per cent of those students study higher national qualifications in further education colleges and the other 75 per cent study in universities.

The funding for FE and HE appears slightly differently. The funding for FE will receive a 20 per cent increase over the period of this Scottish budget. Previously, the increase was front-loaded, but this time it is back-loaded—if that is the opposite of front-loaded—in that there is less of an increase in the first year, 2003-04, but much more significant real-terms increases of some 6 per cent and 5 per cent respectively, I think, in years two and three of the budget period. Those are significant increases in the FE budget.

Our priorities will focus on two things. First, we will continue to help redress the financial situation of many colleges in the FE sector by providing resource so that they can stabilise their financial position more quickly than current plans perhaps allow. Secondly, there will be a significant capital investment in the infrastructure in which FE is delivered. These resources will allow us to take forward those priorities for the FE sector.

It is fair to say that the increase in funding for HE over the period is a little more modest: it is an increase in cash terms of around 15 per cent. In real terms it amounts to year-on-year increases of 1.3 per cent, 3.5 per cent and 1.9 per cent. The key priority for higher education is to widen access and help close the opportunity gap—perhaps allowing a shift in those who are able to access higher education. The priority is not to have a significant expansion in numbers, but to maintain those numbers, as participation rates are already very high.

The key priority for investment is in science and research in higher education. There will be a significant increase in funding for that, particularly in the third year of the budget period. We have announced an increase of £10 million for science and research in higher education in 2003-04. That

will rise to £25 million in 2004-05 and to £35 million in 2005-06.

12:30

David Mundell: Will all that dovetail with our report? How will the funding be considered in the context of our report on lifelong learning, the Executive's budget planning and its higher education review?

Iain Gray: The committee's report is very much part of the context that we have had in mind. Our agreement with the committee is that when the final report becomes available we will respond to it. We have held off producing our lifelong learning strategy until the committee's report is published, because it is proper that we take account of the committee's work. Two other important pieces of work will feed into the process—the higher education review and the consultation on the governance of FE colleges. We have tried to keep that context in mind in setting the priorities, which are fairly broad. We have had the benefit of the committee's interim report on lifelong learning, which has been part of our thinking. I believe that the envelope of resources for FE and HE, even with the broad priorities set, will allow us to respond properly and appropriately to the HE review and to the committee's final report.

Brian Fitzpatrick: I think we all look forward to the disaggregation, particularly under the "other" heading. Perhaps unlike some others, I very much welcome what is proposed in relation to the rollout of educational maintenance allowances—EMAs—because I cannot think of a better contribution to make to getting kids into learning and work. I am delighted with the expansion of the modern apprenticeship scheme. Three cheers for the investment in innovation and science. I take it that when the Executive rolls out the level 3 spending figures we will get a better feel for where the money is going.

I am concerned that it seems to be suggested that we measure our contribution to the enterprise agenda simply by looking along the top line for Scottish Enterprise and do not look at the business transformation that is going on to shake out the kind of proceeds that will contribute to EMAs and the modern apprenticeship scheme. In telling the story about what we are doing, I urge the minister to beat back the notion that it is a case of simply looking at the top line SE figure. That would be a great mistake, which we visited in our most recent budgetary analysis.

Iain Gray: Mr Fitzpatrick powerfully makes the point that a number of things about the enterprise network budgets are often forgotten. The first is that, by and large, half the enterprise network budgets are spent on the training and skills

agenda, which is very important to us. In the Scottish budget, we make additional resource available for particular expansions in that area. An example of that is the additional resource that is available for the expansion of modern apprenticeships, to which Mr Fitzpatrick referred.

I agree that the top line is a blunt instrument with which to make a judgment. I know that the committee shares that view, because it has carried out exhaustive examination of Scottish Enterprise's budgets and has expressed concern about the amount of detail that is available on how those budgets are spent.

Moving Scottish Enterprise from an annual budgeting process to three-year budgeting will help with such examination. It might well allow Scottish Enterprise to fulfil its commitment to the committee to present more detailed figures earlier in the three-year period of the budgeting process, which would allow the committee to examine precisely what the money was being spent on. That is important. [*Interruption.*]

Brian Fitzpatrick: I am sorry—I must have turned my mobile phone back on by mistake.

The Deputy Convener: Mr Fitzpatrick has burst into Mozart.

Brian Fitzpatrick: Mr Fitzpatrick cannot turn it off.

Iain Gray: It is my understanding that there is an agreement with the committee that any budget lines of more than £1 million that fall under the "other" heading will be elaborated on when the level 3 figures are available. I mentioned the two large lines that explain the increase that Mr Mundell asked about. Further detail about what that money will be spent on will be made available.

Brian Fitzpatrick: A small provision is made for son of individual learning accounts. What is the time scale on that issue? Do we have information on the audit of payment?

Ed Weeple (Scottish Executive Enterprise and Lifelong Learning Department): The position on the timing of what we now call ILA 1—the first ILA scheme, which has been closed—is that some payments to some providers are still outstanding, in cases in which investigations are proceeding. The police are investigating a number of providers. Until those investigations and investigations involving malpractice or fraud have been resolved, we cannot close down the ILA 1 scheme and draw a line under it. We are in the closing stages of the process.

The Scottish Executive and Scottish Enterprise set up a joint audit group, which in the past few months has been trying to tidy up the matter and to clear as many payments as possible. The Parliament's Audit Committee has been

investigating the issue. It has investigated Scottish Enterprise and is looking at the Scottish Executive. It will produce a report shortly, which will need to be considered. That is not scheduled to take place until November. It will be impossible to draw a line until that process has been completed.

We cannot embark on the new scheme—ILA 2—because we said that we would take account of all the considerations and advice that arose from the audit and post hoc evaluation of ILA 1. A considerable amount of work has been done and ministers still intend to launch the ILA 2 scheme around the turn of the year, so far as that is possible.

Iain Gray: In response to parliamentary questions, I have made a commitment to announce our plans before the end of this year. A delay in the Audit Scotland report is the only potential obstacle to meeting that goal.

It seems to us that there are a number of principles in son of ILA, as you described it—the department tends, more prosaically, to call it ILA 2. The first is that there must be such a thing, because ILA 1 revealed a powerful latent desire for the opportunities it provided. Secondly, it must meet as well as or better the kind of policy objectives that ILA 1 had. I think that we can make ILA 2 meet those objectives better.

Thirdly, the new ILA must be proofed against the problems that beset and ultimately brought down ILA 1. The Audit Scotland report is therefore significant for that.

I assure the committee that there is resource in the Scottish budget to proceed with ILA 2. Furthermore, work to develop ILA 2—and to deliver it differently and more securely than ILA 1 was—is going on.

Brian Fitzpatrick: I am obliged and delighted with that reassurance.

Mr Macintosh: Brian Fitzpatrick has raised the very subject I wanted to refer to, so I just echo his remarks. In particular, I approve of the support the Executive is giving educational maintenance allowances.

We are talking about additional funding for ILAs. Obviously, no one is using the money that was allocated for the previous funding for ILAs. Is that money still in the budget or has it disappeared?

I am not sure I am explaining this properly. Is there still an allowance in the enterprise and lifelong learning department budget for the original scheme and is the funding we are talking about additional to that?

Iain Gray: The resources for ILA 1 that were not used because the scheme was suspended form part of the pressures and savings within my

budget. In other words, they become part of the underspend or the end-year flexibility in the department's budget. Those issues towards which we have turned end-year flexibility have benefited from those resources being available.

Mr Macintosh: I cannot remember how substantial that amount was. Is the £3.5 million going to be put on top of those resources in the future?

Ed Weeple: Yes, it is. The current baseline for ILAs is £15 million. The baseline in years 2 and 3 will be raised to £18 million and £18.5 million.

Mr Macintosh: Excellent.

I also have to ask about a point of detail that you might not be able to answer now. Something about the Scottish renewables obligation came up in a previous meeting. I believe that the department is working on a scheme that would allow more small-scale developments such as wind turbines or other renewables. I cannot remember who was giving evidence at the meeting; it was possibly your predecessor, Wendy Alexander. One of the officials at that meeting said that there were proposals that would make it easier for communities and small-scale operators to receive Government support in taking advantage of renewable technology. Has that been worked up further? Where has the issue got? I was expecting to hear something by now.

Iain Gray: I am not sure what was referred to. If the evidence you are talking about was given at an earlier meeting of the committee, perhaps it would be best if I undertook to go back and consider that evidence and write to the committee. I confess I am not sure about what was referred to.

The Deputy Convener: By way of guidance, minister, I believe that the evidence came from Mr Finnie.

Iain Gray: Was it given to this committee?

The Deputy Convener: Yes.

Iain Gray: If the committee is willing, perhaps I can go back and consider what was referred to and write with the information.

Mr Macintosh: I was reminded by the letter that mentions the Scottish renewables obligation.

David Mundell: I have a small question to which the minister might want to reply in correspondence. It relates to Mr Finnie in his wider, rural development role, and it is an issue I brought up during the budget process. What is the budgetary relationship between the enterprise and lifelong learning department and Mr Finnie's rural development function? How that fits together is unclear.

Iain Gray: They are related in a number of

different areas. The relationship between departments and between ministers probably works in slightly different ways according to the cross-cutting aspect that has already been dealt with. Central to the matter is the Cabinet sub-committee on rural development, which I am a member of and which does a great deal of work on economic development in rural and remote Scotland. That includes having dialogue and meetings with responsibility shared among Ross Finnie as the minister, Highlands and Islands Enterprise and the Scottish Enterprise network.

There is also a clear joint interest in renewables, as Mr Macintosh has pointed out. A third and perhaps less obvious area of significant common interest is scientific research. Mr Finnie's department has a relatively large research budget which is invested in agricultural and food industry-related research, substantially but not solely through the Scottish agricultural and biological research institutes. One of the requirements that the Minister for Finance and Public Services has laid on Mr Finnie and me as a result of our budget settlement discussions is the introduction of a system that will enable us to examine more closely and in a more co-ordinated way how the enterprise and lifelong learning department and the environment and rural affairs department invest in science and whether we can establish any synergy.

That said, there has already been a significant cross-over between our departmental responsibilities. For example, the budgets include funding for the small firms merit award for research and technology—or SMART awards—and the support for products under research—or SPUR—awards for innovation; and for proof of concept awards, which assist in developing research ideas into marketable products. Moreover, the likes of the Hannah Research Institute have been the recipients of significant awards from that funding because that is where a lot of the powerful innovation is taking place. We are willing to consider the issue in a more strategic way.

The Deputy Convener: I thank the minister and his departmental colleagues for attending this morning's meeting. With regard to the previous agenda item, I might observe that some useful lessons were learned about parliamentary procedure. If members agree, I am minded to write to the Procedures Committee, asking it to examine the procedure for statutory instruments. It is undesirable that a committee and a minister be required to address very substantive issues at very short notice.

Brian Fitzpatrick: The letter from the Law Society made it clear that there had been concerns somewhere off in the ether. However,

after looking at the postmark on the letter, I find it astonishing that at such a very late stage we are receiving representations from one of the bodies that we would have hoped are part of the civic dialogue. I gather from the minister that the Faculty of Advocates had made representations, but it is unhelpful that the lead committee should be so bereft of information. This is not a criticism of Lloyd Quinan, who obviously acted on the information that he had, but the objection in question has been hanging around since the mid-19th century. It does not help that we have been forced into dealing with the matter in a rather accelerated way.

The Deputy Convener: It strikes me as unhelpful that a committee and a minister are required to try and determine significant issues at very short notice. The parliamentary procedure for considering statutory instruments needs to be examined, and I propose to write to the Procedures Committee on that basis.

Iain Gray: My only response is that I agree that the procedure this morning did not feel ideal or comfortable on either side. Of course it is up to the committee to raise the issue of procedure as it sees fit. Indeed, it would be understandable if it did so.

Andrew Wilson: I support your proposal to write to the Procedures Committee, convener. Perhaps the conveners liaison group also has a role because the implications are not just procedural, but resource related. The issue comes down to the advice that is available to committees from the Scottish Parliament information centre and the legal office, and the pressure on clerks. All those aspects are under-resourced.

The Deputy Convener: That point is noted.

12:50

Meeting continued in private until 13:16.

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