



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 12 December 2013

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CONTENTS

	Col.
INTERESTS	1591
DECISION ON TAKING BUSINESS IN PRIVATE	1592
INDEPENDENCE WHITE PAPER	1593
SCOTTISH GOVERNMENT UPDATES	1625
COMMITTEE OF THE REGIONS	1627
“BRUSSELS BULLETIN”	1630

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
23rd Meeting 2013, Session 4

CONVENER

*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

DEPUTY CONVENER

*Hanzala Malik (Glasgow) (Lab)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Roderick Campbell (North East Fife) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

Jamie McGrigor (Highlands and Islands) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Gavin Brown (Lothian) (Con) (Committee Substitute)

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab) (Committee Substitute)

Nicola Sturgeon (Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

Committee Room 2

Scottish Parliament
European and External Relations
Committee

Thursday 12 December 2013

[The Convener *opened the meeting at 09:00*]

Interests

The Convener (Christina McKelvie): Good morning, and welcome to the 23rd meeting of the European and External Relations Committee in 2013. I make the usual request for mobile phones to be switched off.

I again welcome Patricia Ferguson. I convey apologies from Jamie McGrigor, and we send him our best wishes. We welcome Gavin Brown, who is substituting for Jamie McGrigor today. I ask Gavin to make a declaration of interests.

Gavin Brown (Lothian) (Con): I have nothing to declare.

The Convener: Thank you.

I also welcome to the committee Dr Daniel Kenealy, who will be our adviser on the Scottish Government's white paper in relation to the European Union. Welcome to the committee, Dan.

Decision on Taking Business in
Private

09:01

The Convener: The first agenda item is to decide whether to take agenda item 6 in private. That item is to discuss our remit and future plans for our inquiry. Do members agree?

Members *indicated agreement.*

Independence White Paper

09:02

The Convener: The second agenda item is on the Scottish Government's white paper on independence.

Today we have an evidence session with the Deputy First Minister and her officials. I welcome the Deputy First Minister, Nicola Sturgeon, as well as Russell Bain, interim head, and Miranda McIntosh, senior policy executive, from the Scottish Government's external affairs policy team. I welcome you all to the committee this morning—we are delighted to have you here.

I believe that you have a brief opening statement to make, Deputy First Minister.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): I am grateful to the committee for giving me the opportunity to be here today. I will briefly outline the key points on international relations, as laid out in "Scotland's Future". I will then be happy to answer your questions.

The "International Relations and Defence" chapter of "Scotland's Future" sets out the key issues, but there are also important related sections on security and intelligence, immigration, citizenship and passports contained in the chapter on "Justice, Security and Home Affairs". There are also links to how an independent Scotland would approach economic and trade policy, to how we would secure the health and wellbeing of Scots, to the continuing importance of international students in our higher education system and to our broad approach to environmental policy.

As "Scotland's Future" makes clear, independence would mean that

"Scotland's national interests will be directly represented"

internationally for the first time in 300 years. "Scotland's Future" sets out not only how we could do that, but why it is better for all of us if decisions on international policies are taken for Scotland in Scotland.

Independence presents an important opportunity to put Scotland's interests first at all times. This opportunity is important because the choices that an independent Scotland makes internationally will have a significant impact on our economy, our society and our people. Almost 200 countries around the world take that opportunity for granted, and many of them are smaller and, indeed, less fortunate than Scotland in terms of natural resources. Some of them do not have the

advanced institutions in civic society, education or governance that Scotland has.

One of the most important messages that "Scotland's Future" communicates is that Scotland would be well able not only to participate but to thrive internationally. It explains how we will take our place in the international community and it outlines the structure of an initial diplomatic network, highlighting the international institutions within which we would participate as an independent country.

One of the most important of those institutions is, of course, the European Union. "Scotland's Future" sets out a suitable legal route to facilitate a transition to independent Scottish membership of the EU. We have clearly set out our intentions as regards membership of a range of other organisations, including the United Nations, the North Atlantic Treaty Organization, the World Trade Organization, the Council of Europe and the Commonwealth. At present, we have no formal voice in any of those institutions, but are represented by a Westminster Government that, understandably, often bases its actions on different international priorities.

I stress that our prospectus for independence does not rest on how many embassies we would have or which international organisations we would continue membership of. Instead, we want to focus on what we would have the opportunity to achieve with the powers that independence would bring. Our priorities are clearly set out in "Scotland's Future", and they are based around a clear framework of participating in rules-based international co-operation, protecting Scotland's people and resources, and promoting sustainable economic growth. We believe that that framework would enable us to deliver a set of policies that are focused on our national interests and are in accordance with our priorities.

The white paper clearly explains that an independent Scotland would be positioned as a country that observes international law and respects and promotes human rights, democratic values, equality and good governance.

We have some unique advantages and experiences to offer in climate change and energy, and we have shown that we can innovate through our approach to international development and aid.

"Scotland's Future" makes the case for a set of strong new relationships with the other nations of these islands, with our European, Nordic and Atlantic neighbours, and with the wider global community. In short, it sets out a vision of how an independent Scotland would operate constructively and co-operatively in the community of nations.

That is a compelling vision and one on which I am happy to answer the committee's questions.

The Convener: Thank you, Deputy First Minister.

Last week, we heard evidence from Professor Stephen Tierney and Professor Michael Keating, who suggested that one of the unique aspects of the proposal for an independent Scotland is the Edinburgh agreement. How significant is the Edinburgh agreement in terms of Scotland's place within the international organisations that you mentioned?

Nicola Sturgeon: The Edinburgh agreement is very significant; it is a real credit to the Scottish Government and the United Kingdom Government. I heard Michael Keating, or perhaps it was one of the other witnesses last week, describe it as being almost unique in the sense that the two Governments with very differing views on the constitutional future of Scotland were able to come together and agree, in a constructive manner, how the people of Scotland should be given the opportunity to make a decision about their future. It is a shining example internationally of how these things should be done.

Clearly, the significance of the Edinburgh agreement is, first and foremost, that it paved the way for the legislation that has now been passed by Parliament to govern the referendum. Secondly, it was significant because of its commitment in article 30, which both Governments signed up to, that both Governments would respect the outcome of the referendum and would operate constructively in the light of the outcome of the referendum, whatever it might be, to best represent the people of Scotland and the people of the rest of the United Kingdom. That is a really important commitment.

I say it often that it is absolutely the case that we are engaged right now in a passionate debate about the future of Scotland that will lead to the Scottish Government and those who support independence arguing their case passionately, and to the UK Government and those who oppose independence arguing their case equally passionately. Things will be said and positions will be taken, but once the people of Scotland decide and have expressed their democratic will, and if that is to vote yes for Scotland to become an independent country, there will be an overwhelming mutual interest on the parts of the Scottish and UK Governments to work together co-operatively and constructively to implement that decision, and to do so in the interests not just of the Scottish people but of the people of the rest of the UK. It is impossible to overstate the significance and importance of the Edinburgh agreement.

Clare Adamson (Central Scotland) (SNP): In many ways, the Edinburgh agreement is the key to the way forward at this stage. Earlier this year, Maroš Šefčovič, the vice-president of the European Commission, wrote to you, cabinet secretary, saying:

"the European Commission has not commented on any specific situation in relation to any Member State and will continue to refrain from doing so. The European Commission would only be able to express its opinion on the legal consequences under EU law of a specific situation upon request from a Member State detailing a precise scenario."

Given that there is such detail in the white paper about using article 48 of the Treaty on European Union to achieve Scotland's membership post independence, does the Edinburgh agreement allow us to put scenarios to the Commission prior to the referendum in order to clarify the situation?

Nicola Sturgeon: It could be argued that the Edinburgh agreement paves the way for that. However, the position of the Commission and the obligation on the Scottish and UK Governments to provide as much clarity as we can about the choice that faces the Scottish people mean that common sense dictates that we should go to the European Commission jointly with the scenario that the Scottish Government has laid out in the white paper and take up the Commission's invitation to comment on "a precise scenario."

I have made it clear, as has the First Minister, that the Scottish Government stands ready to do that. We are keen—we would do it tomorrow if the UK Government were willing. I do not see any reason why that cannot be done so that we could have a debate about Europe in the context of the opinion of the European Commission. The Commission has been very clear that it will give that opinion only on being asked to do so by a member state. Right now, the member state is the UK Government. I repeat the invitation to the UK Government.

We have laid out "a precise scenario" of what we think is a valid legal route for Scotland to make the transition from being a member of the EU as part of the UK to being a member of the EU as an independent country, and for making that transition smoothly and with no break in membership of the European Union. By all means, let us go to the European Commission and ask it what its view is of that legal route.

Gavin Brown: You just referred to article 48. When did the Scottish Government reach its view that article 48 is the appropriate route?

Nicola Sturgeon: We reached that view in the process of drawing up and developing the white paper. As has been said before and since the white paper was published, that view is consistent with the legal advice that we have received.

The white paper explicitly states that it will ultimately be for the European Union to decide on the appropriate route to enable that transition, but we think that article 48 is a valid and sensible route to take. It is a route that would recognise that Scotland is currently in the European Union; our citizens are citizens of the European Union and we already comply with the body of law that governs the European Union. It is a route that would lead to amendment of the treaties. The witnesses at your committee meeting last week seemed to agree that it is a “plausible” route to take. We have come to that view based on our considerations.

Gavin Brown: Who outside the Scottish Government has said that they feel that article 48 is the appropriate legal route?

Nicola Sturgeon: One of the witnesses last week—I cannot remember which one; I think it was Stephen Tierney—described it as “plausible”. People including Sir David Edward, who is a former judge of the European Court of Justice, have made comments that are perhaps not specifically about article 48 but are about the fact that there would be obligations on the European Union to negotiate in good faith.

I am prepared to debate with anyone who wants to do so what the appropriate legal route might be. Based on any objective reading of the treaties, article 48 is a sensible and—to use the word that was used in the committee meeting last week—“plausible” and valid route by which Scotland can make that transition. The case for that is very strong; it is overwhelming.

Gavin Brown: You said “The case ... is overwhelming.” Other than the witness who gave evidence to the committee last week, who outside the Scottish Government has said specifically that article 48 would be the correct legal route?

Nicola Sturgeon: I will put the question back to you and ask this: who outside the Scottish Government has said that it would not be a valid legal route? I am happy to debate the point with anybody. I think that it is a valid legal route. I have not heard a remotely convincing argument from anybody that it is not a plausible legal route. The white paper is explicit in saying that ultimately, it is for the European Union to determine what the best legal route would be. However, the article 48 route is the one that seems, based on any objective reading of the treaties, to lend itself to Scotland’s situation.

Gavin Brown: Just for clarity—because you wanted to put the question back to me although, obviously, you are the one who is giving evidence here and not me—is the only person you can refer to outside the Scottish Government who has said categorically that article 48 would be the correct

legal route a witness who gave evidence to this committee last week?

Nicola Sturgeon: No, I am saying that I have not heard anybody make a convincing case that article 48 would not be an appropriate legal route. If you want to make that case, I would be happy to hear it and I would be happy to debate it with you. However, I have not heard anybody take serious legal issue with the fact that that route would be a valid legal route to take.

Gavin Brown: I am sure that we will debate it in due course, but who has said that it is a valid legal route? You are saying that “The case ... is overwhelming.”

Nicola Sturgeon: I am saying that article 48 is a valid legal route. We have published a white paper that is consistent with legal advice from our law officers, as we said we would. Albeit that there will be people who say that they do not think that Scotland should or would be a member of the European Union, I have not heard anybody make a compelling case that article 48 would not be a valid legal route to take. If you want to quote people who are saying that, I am happy to engage in that debate, or if you want to tell me why you think that it would not be a valid legal route, by all means do that and we can have that debate.

09:15

Gavin Brown: Okay. In relation to the timing, article 48 states:

“amendments ... enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.”

How many of the members would have to have a referendum and what are the “constitutional requirements” of each of the existing members?

Nicola Sturgeon: If you are talking about traditional accession to the European Union—which I argue is not the position that Scotland would be in—to the best of my knowledge the ratification process has never been difficult or controversial. It has never been blocked by a member state and it has never occasioned a referendum in a member state, so I do not consider that that would be required for Scotland even if we were in a traditional accession situation, which we are not because of the situation that we have laid down through article 48.

Gavin Brown: Have you done an audit of the constitutional requirements of the existing members of the European Union to see what processes they would have to go through and the timescale that it might take for all of them to ratify?

Nicola Sturgeon: Obviously, the constitutional arrangements of each member state are for them. What I am saying to you very clearly is that, in the

history of the European Union, treaty ratification to confirm EU membership—we are talking here about traditional, full-blown article 49 accession—has never failed, has never been controversial and has never triggered a referendum in any member state. That is the case in the entire history of the European Union. I say again that if you want to put to me evidence that the situation in Scotland would be different, I will be happy to engage with that, but as far as I am aware you are not putting such evidence to me.

Gavin Brown: My question to you was whether you, as a Government, have looked at the constitutional requirements and ratification processes of all 27 member states to ensure that all of them would be able to do it within 18 months.

Nicola Sturgeon: Of course we look at all such matters; that has led us to the statement that I have just made to you. In the history of the European Union, treaty ratification to confirm European Union membership has never been controversial, nor has it triggered a referendum in a member state. All the work that we have done around the matter has led us to our belief. I could point to precedents that suggest overwhelmingly that the European Union—which, let us remember, is an organisation whose instinct and *raison d'être*, if you like, is enlargement to try to expand its territory—has operated pragmatically and flexibly.

It is not a direct analogy, but on German unification, the European Union operated pragmatically and flexibly to allow the territory of East Germany to become fully part of the European Union in a very, very short space of time. I recall reading a Commission press release that extolled the virtue of the European Union's behaving in a way that was inherently pragmatic and flexible.

Scotland is already a member, albeit by virtue of its being a part of the UK, of the European Union. We have complied with the body of European law for 40 years. Our citizens are European citizens. We have some 160,000 citizens of other European member states living here. The idea about independence that Gavin Brown seems to be putting to me, and that opponents of independence put to me, is that Scotland would somehow not be welcome as a member of the EU. I find that idea incredible.

Gavin Brown: I did not suggest that Scotland would not be welcome as a member at all. Forgive me for pursuing the point, convener, but I feel that the Deputy First Minister has not answered my specific question. Has the Scottish Government conducted an audit of the constitutional requirements of the 27 existing member states in relation to the timescales that they would have to

fulfil? Have you done that work? Can you say that you have done it?

Nicola Sturgeon: The Scottish Government, of course, looks at the particular requirements of member states in terms of what they would have to do. We are not in a situation that the treaties expressly provide for; there is nothing in any of the treaties that covers part of an existing member state becoming independent, so we cannot look to the treaties for the absolute circumstances that would apply.

To answer your question, we have looked at various different circumstances and scenarios, which has led us to the conclusion that I have now stated on a number of occasions. Unless you want to put to me some specific reason why it is wrong, I simply reiterate that that is the conclusion that we have reached. There has never been an example of a state from outside the European Union acceding to European Union membership in which the ratification process has resulted in any difficulty.

Gavin Brown: I will leave it there. I do not think that we are making progress.

Roderick Campbell (North East Fife) (SNP): I am looking at Professor Tierney's evidence from last week. He told us that, in his view, there is not "a clear set of articles that we can point to on admission for such a case."

He was referring to Scotland's accession, which relates to the point that you have just been making. He also said, having looked at articles 48 and 49 of the Treaty on European Union, that he does

"not see a particular legal problem."

He also said:

"I imagine that, if the political will existed, the process could be fairly smooth."—[*Official Report, European and External Relations Committee*, 5 December 2013; c 1556-57.]

Would you like to comment on that?

Nicola Sturgeon: I agree with that. The real world intervenes in what can sometimes sound like a very academic legal argument. With political will—I think that there will, if Scotland democratically votes for independence, be the political will for Scotland to continue to be a member of the European Union—that process can happen quickly, and I believe that it will happen smoothly.

It is not a direct precedent, but I have already cited the situation with the former East Germany. That was a territory that was not already in the European Union that very quickly became part of European Union. We are talking about Scotland—a country that has complied with the body of

European law for many years. With the political will that would be there, and given all the consequences that would arise if Scotland was not in the European Union, not just for Scotland but for other member states, I agree that it could be—and, I suggest, will be—a smooth process.

Roderick Campbell: I have another question, although it is not directly related.

In your opening statement, you talked a little bit about your vision. Last week, Professor Keating said that he was disappointed. He said:

“I am looking for a vision of Scotland in Europe and what kind of Europe Scotland would want and what its priorities in Europe might be. I do not see that in the white paper.”—*[Official Report, European and External Relations Committee, 5 December 2013; c 1555.]*

Will you comment on that?

Nicola Sturgeon: I dispute that view. We have set out a vision of why it is important that Scotland be a member of the European Union, of how an independent Scotland could represent its own interests well within the European Union, and of how it could contribute to reform of the EU and to things that are important for the EU, in terms of how it operates to maximise economic growth, for example. We have set out how an independent Scotland would conduct itself on the European stage and on the international stage.

I apologise to Professor Keating if I have misinterpreted his evidence in any way, but I detected that he thinks that our objective of securing the transition to independent membership on the basis of continuity of effect is—in his view, but not using his exact words—missing an opportunity to do things differently from the UK. When we talk about continuity of effect, we mean making the transition to independent membership on the same terms and conditions—referring to such things as the euro and the Schengen area—as those that we currently operate under.

Once Scotland is an independent member of the European Union we will, just like all other member states, be able vigorously to assert our national interests and contribute constructively to the future development of the European Union as an institution.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): At a meeting that I attended recently, Paschal Donohoe, the Irish Minister of State for European Affairs, described Ireland’s relationship with the UK as being much improved because of Ireland’s independent membership of the European Union and the fact that it is a small nation. What do you think the benefits are to Scotland as a relatively small nation within the European Union—as a member and as one of a family of small nations within that union?

Nicola Sturgeon: Overwhelmingly, the most significant benefits to Scotland of being part of the European Union come from what being a member of the single market opens up for us economically. There is no doubt that being part of a market of 500 million people with free movement and free trade protects and helps to create jobs in Scotland.

We have a good record on foreign direct investment and it is safe to say that that is helped considerably by our membership of the single market. Firms outside Europe can invest in Scotland in the knowledge that that gives them access to the single market. Something like 40 per cent of our foreign investment is from EU member states, and that is clearly of benefit. All that would be put at risk if we were not a continuing member of the EU.

We set out evidence in “Scotland in the European Union”, which is a background paper that we published just after the white paper was issued, to show that, in the way in which the European Union operates, which we are all familiar with, small states have a strong influence. Small states can influence the direction of European policy. The idea that big states wield all the influence in Europe is not borne out by the evidence.

We would have the ability to forge alliances on issues that are important to us. We would inevitably work closely in the European Union with our partners elsewhere in the UK. A lot of the business of the EU, particularly in the Council, is done by compromise and consensus and not by vote. If a decision was made by vote, our position would never be worse than it is now because, if we agreed with the UK, we would vote with the UK, but if our interests diverged, we would have the ability to put our view across directly, which we do not have at the moment.

The benefits of being in Europe are huge and enormous. Let us not forget that, for all the discussion about Scotland’s independent membership of the European Union, there is a risk to our membership of the EU if we are not independent, given that David Cameron has committed to holding an in/out referendum in 2017.

Willie Coffey: What does Scotland as an independent nation bring to the table? We have of course been a member for 40 years, as you have said. What do we bring to the table additionally that our members and partners in the Union would be attracted to and would welcome?

Nicola Sturgeon: We bring a number of things. We are Europe’s biggest oil-producing nation and we are one of Europe’s biggest gas-producing nations. We have substantial fishing waters and

we export a lot to the rest of Europe—food and drink exports are particularly important.

We bring particular expertise. I mentioned in my opening statement our expertise as a country in relation to climate change and energy. We bring to the European table a particular approach to certain issues. On current issues on which there is close alignment in Europe, we have a particular perspective—for example, through our efforts to tackle youth unemployment. We bring a particular perspective on the world and we bring expertise on a range of issues that are important to the development of the European Union's priorities in the next few years.

I talked about our commitment as an independent nation to international law, democracy and human rights. Small nations can have a big influence on the world if they are seen to be a voice for peace and justice. That is what Scotland would be.

Willie Coffey: This is my last question on this theme. What are the downsides and disadvantages for Scotland in remaining in the EU as part of the UK?

Nicola Sturgeon: If Richard Lochhead was sitting here instead of me, he could cite a number of instances in which there have been real issues for Scotland. As part of the UK, which is the EU member state, we can attend Council of Ministers meetings, but we can speak at those meetings only with the UK Government's express permission and only if we take the UK Government's line. We hope that, in many cases, we are comfortable with that line—a lot of co-operation takes place to try to ensure that—but, if particular Scottish interests are not reflected in the UK Government's negotiating line, we have no formal ability to press the Scottish case.

Richard Lochhead, through his fishing and agriculture responsibilities, probably has more experience of that than any other minister in the Scottish Government. Recently, extra common agricultural policy payments were made to the UK Government by virtue of the fact that Scottish farmers have some of the lowest per hectare payments in the European Union, but that money was not made available in its entirety to Scotland. There are real examples of how our current status does not permit the full and active representation of Scotland's interests.

09:30

I have alluded to my second point already, so I will not labour it; I will just state it as a fact, as I think it is. If Scotland is not independent, based on what David Cameron appears to be committing to, we face the real possibility of an in/out referendum on Europe in which I think—although I do not take

it for granted—that Scotland would vote to stay in the European Union given the benefits that accrue from that, but the UK as a whole would vote to come out. I hope that it would not do so, but that is at least a possibility. In that scenario, Scotland would find itself on the road out of the European Union completely against our will, which I think would be catastrophic for our economic and national interest. If we do not become independent, we face that serious prospect.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): Before I ask questions of my own, I will briefly refer back to a comment that you made in response to Gavin Brown's line of questioning. It would be helpful if you could provide the committee with information on the work that has been done to check out whether other member countries would be able to conform to the timetable that is laid out in the white paper. That would be useful for us and would help to inform our consideration of the white paper. Would that be possible?

Nicola Sturgeon: I am happy to look at what we can put together. I think that Gavin Brown's point was about the ratification processes of other European countries, and I am happy to look at what we can put together on that for the committee.

Patricia Ferguson: That would be helpful—thank you.

Nicola Sturgeon: I think that it will all be publicly available information.

Patricia Ferguson: I suspect that it will be. Given the number of civil servants who are working on the project, I would have thought that the information could be pulled together quite easily and I would be surprised if that had not already been done, although it seems that it has not been done.

Has the Government taken legal advice on the issue of students from other parts of Great Britain being able to access free tuition in Scotland post independence?

Nicola Sturgeon: I will not rehearse the ministerial code issues on the source and content of legal advice, because Patricia Ferguson will be as familiar with those as I am. The white paper is consistent with any legal advice that we have taken.

On the substantive issue of tuition fees, it is well known that the Scottish Government thinks that access to higher education based on the ability to learn, not the ability to pay, is an important principle. I benefited from that principle as a young student and I do not think that I have a right to deny other young people that same access to education. Equally, flowing from that, we do not

want to have to charge students from the rest of the UK to access Scottish universities. That is not a position of our choosing—we are in it because of the tuition fees policy in the rest of the UK. If we did not charge students from the rest of the UK to come to university here, we would potentially crowd out our students' access to university. If the position in the rest of the UK changed at any point and there was a return to free access to higher education, I am pretty sure that the position in Scotland would also change.

Patricia Ferguson: I am talking about post independence.

Nicola Sturgeon: Well, post independence, that position would change. If students in England were no longer charged to go to university there, the reason for charging students from the rest of the UK to go to university in Scotland would no longer exist to the same extent. Obviously, I am speaking for the current Scottish Government, but it is likely that that policy would change.

The position on charging students from the rest of the UK has come about because of the policy in the rest of the UK; we would not have taken that position if we had had a completely free choice.

Patricia Ferguson: What would happen if students in, say, Italy were charged for tuition?

Nicola Sturgeon: The white paper lays that out. We think that, in terms of European law, we would require to make an objective justification for charging students from the rest of the UK tuition fees. We believe that that can be done, because of the particular circumstances of the geography of Scotland and of the rest of the UK and the policy that exists in other parts of the UK. The interesting thing is that, since we have been charging students from the rest of the UK, we have still seen an increase in the number of students from the rest of the UK coming to Scottish universities, and we want to see that continue. However, given the policy divergence north and south of the border, and given all the circumstances that exist, if we did not have a policy of charging students from the rest of the UK while they are still charged in the rest of the UK to go to university, that would lead to unfortunate consequences for our own students' access to university education in Scotland. That is the objective justification and it is one that we are confident of.

Patricia Ferguson: Earlier, you made great play of the fact that Scottish people benefit by being citizens of the European Union. So, too, do people in the rest of the United Kingdom, as it is currently constituted. Where is the legal evidence that the situation could change in an independent Scotland, bearing in mind that Universities Scotland has taken legal advice that indicates that nationality cannot be a deciding factor? It seems

to me that the only rationale that you have offered so far is, in fact, nationality.

Nicola Sturgeon: The legal issue turns on objective justification. That is what we set out in the white paper, and we believe that that objective justification can be made. I return to the point that I was making. We believe in free education, and we believe in free education for people regardless of their nationality. We require to charge students from the rest of the UK because of the policy decisions that have been taken by Westminster Governments—as is their right—to charge students for access to university in England. We have an obligation to ensure that we have the correct balance of students in our universities so that Scottish students can access university, and the policy of charging students from the rest of the UK flows from that. To answer your point about legality, we believe that it can be objectively justified.

Patricia Ferguson: If it cannot be objectively justified, it would, in my view, be a breach of EU legislation. If I am right and you are wrong, what would the cost be to Scotland of having to amend that policy?

Nicola Sturgeon: The figures on what it would cost for students in the rest of the UK to have free access to university in Scotland are a matter of public record and have been cited as being £150 million or thereabouts. However, it is not just an issue of cost; it is about protecting appropriate access to universities for Scottish students. I think that it is great that students from the rest of the UK come to study in Scotland and that students from the rest of the European Union, and other international students, come to study here, but we also need to ensure that our students in Scotland have good opportunities to access universities in Scotland. Therefore, the policy is not just about cost but about ensuring that we are able to retain that healthy balance of students in our universities.

You said that, if our policy cannot be objectively justified, it would breach European law. The whole point that I am making is that it complies with European law because it can be objectively justified, and we have laid out the reasons why we strongly believe that that is the case. I would hope that anybody who believed, as I do, in the principle of free education would get behind that position and see it as common sense.

I am not sure whether a Labour Government would reverse the decision on tuition fees in the rest of the UK, but if one day we got a traditional Labour Government that would return the rest of the UK to free education, I think that the position in Scotland would change. There would no longer be the same requirement and necessity to charge students from the rest of the UK to come to university in Scotland.

Patricia Ferguson: I understand that the Deputy First Minister really does not want to answer the question.

Nicola Sturgeon: I answered the question.

Patricia Ferguson: No. The question is not about what your policy is and why that is your policy. It is about what the position would be if Scotland were to be independent and a member of the EU.

You cannot discriminate against other members of the EU based on their nationality. I have heard no rationale for discriminating against students from the rest of the UK other than that they are not Scottish and that there happen to be tuition fee payments where they live. That is a matter of policy in those jurisdictions, but it is not a matter for the Scottish Government. It may opine on the matter, but it cannot make its legislation distinct in that sense from European law.

Nicola Sturgeon: Just for the record, your last question to me was about how much it would cost if we did not charge, and I answered that question directly, as I recall.

Patricia Ferguson: Indeed.

Nicola Sturgeon: I think that your previous question was about the basis on which we take the position that we can charge students from the rest of the UK. I went into some detail about the need to have an objective justification for that in terms of European law. I also set out what I consider the objective justification to be. It is not about nationality; it is about the fact that we have a set of circumstances flowing from geography and the cross-border flows of students between Scotland and the rest of the UK, and the consequences for Scottish education of a policy decision taken at Westminster to charge its own students for access to university, which has implications for Scottish universities. That is the objective justification for the position that we have taken.

I set out all of that. Patricia Ferguson is entitled to disagree with it, but I do not think that she is entitled to say that I have not answered the question, because I have done so at some length.

Patricia Ferguson: I was not suggesting that you have not answered the question; I was suggesting that you were providing more information than you were actually asked for and thereby trying to prevaricate, if I may say so. However, you are right that £150 million would be lost to the Scottish exchequer and to Scottish education if the current situation pertained in an independent Scotland. I presume that, in that scenario, more students from the rest of the UK would come to Scotland, so the costs would likely be greater.

Nicola Sturgeon: I think that Patricia Ferguson has just made the case for the objective justification of our policy. The current situation is the one that we propose would continue in an independent Scotland—we propose a continuation of the status quo. I have set out what the position of a Scottish National Party Government in an independent Scotland would be: it would make the objective justification case, which we think is very strong. If there was a Labour Government in an independent Scotland, perhaps it would be happy to charge everybody, and perhaps there would be tuition fees for Scottish students as well—who knows? I am setting out the position of an SNP Government in an independent Scotland. That position is set out very clearly in the white paper and is based on the objective justification that I have referred to.

The situation is regrettable, in that we do not want students in the rest of the UK to be charged to go to university anywhere in the UK. However, as long as the policy decision of the Westminster Government is in place, that is the position in which we find ourselves. If the Opposition members around the table want to lobby the UK Government to change its policy, we might all end up in a happier position.

The Convener: Before I let members in with supplementary questions, I should let colleagues know—perhaps they already know this—that the Education and Culture Committee is going to look at aspects of the white paper and specifically those that relate to international students. Perhaps we should leave some of the questions for our colleagues on that committee.

Clare Adamson: At the moment, charging is determined by a residency test and is not to do with nationality. In an independent Scotland, would it not be the case that primacy would be given to residency—to where a student lived within the European Union—and that it would not be about nationality? What would be the impact post 2017 on students in the rest of the UK if the UK leaves the European Union?

Nicola Sturgeon: You are right about residency. If an English student is domiciled and resident in Scotland, that is what the decision is based on. It is not about nationality, and I think that it is pretty invidious for anybody to suggest that it is. Our position is a practical policy solution to a problem that is not of our making but which is nevertheless one that we cannot ignore, given its impact on Scottish universities.

If the UK leaves the European Union, the consequences for students in the rest of the UK—and for the rest of the UK—will be pretty severe. If we are independent, thankfully we will be able to decide for ourselves; if we are not independent—I have already said this, so I will not go into detail—

we will be in danger of being taken out of the European Union on the coat tails of a UK decision. The implications of that across a range of sectors would be very serious indeed.

09:45

Gavin Brown: On the idea of objective justification, are there any existing examples of EU countries that treat 25 other member states in one way but can charge a 26th member state in a different way from the others?

Nicola Sturgeon: There is no set of circumstances that is completely analogous to that which we will face if Scotland becomes independent in a situation in which there are tuition fees south of the border. If Gavin Brown does not like the idea of that situation, he should probably raise it with his Westminster colleagues in order to procure a change of policy in the rest of the UK.

Gavin Brown: I was merely asking whether there are existing examples—

Nicola Sturgeon: And I gave you an answer.

Gavin Brown: Which was no. Thank you.

Hanzala Malik (Glasgow) (Lab): Good morning, cabinet secretary. I want to clarify a couple of your statements. You said that Scotland would want to be part of the European Union whereas the UK may not, but that you are not taking that for granted. However, you seem to be taking it for granted that Scotland would be a member. Which is it? Are you taking it for granted or not?

Nicola Sturgeon: Sorry, but I am not sure that I understand your question.

Hanzala Malik: I am talking about the electorate's decision to opt in or out of the European Union.

Nicola Sturgeon: I cannot remember what I said that I was not taking for granted. I think that I was saying that, if there was an in/out European Union referendum, as with any referendum, one cannot take the result for granted. I am pretty confident—very confident, in fact—that, in an in/out EU referendum, people in Scotland would not vote to come out of the European Union. I was simply making the point that one should never try to predict with certainty the outcome of a referendum, but I would be very surprised if that was the result.

Hanzala Malik: That is what confused me. You say that you do not want to predict the result, and then you go on to predict it. I was just wondering what—

Nicola Sturgeon: It is an opinion. You might take a different view, and you are entitled to do so. I would be very confident that, in a referendum on membership of the European Union, people in Scotland would vote to stay in the EU because of the benefits that come from that. I appreciate that people have gripes and groans and frustrations about the European Union—we all do from time to time—but I think that, when the chips are down, people in Scotland would vote to stay in. That is my opinion, which I hold fairly strongly.

Hanzala Malik: You also commented that you did not want to talk about embassies and how many we would have round the world. I come from Glasgow, where there are people of 140 different nationalities, and I think that they would be quite worried about that statement. What did you mean by that?

Nicola Sturgeon: I think that you misheard my statement, so I am happy to repeat it. I am happy to talk about embassies, and the white paper has a fairly extensive section on the number of embassies that we would have and where our initial focus will be in terms of their location. I know from my constituency experience how important that is.

The point that I made in my opening statement was that our international outlook, and the debate in an international context about whether Scotland should be an independent country, is about much more than simply how many embassies we have. It is about the role that Scotland could play as an independent country in the world. I hope that that clarifies the comment.

Hanzala Malik: I will move on to immigration policy. If our immigration policy was to differ from that of the rest of the UK, how would that affect our relationship at the border?

Nicola Sturgeon: Our white paper sets out some ways in which an independent Scotland's immigration policy would, if the current Scottish Government was in office, differ from the immigration policy in the rest of the UK. For example, we have been clear that the post-study work visa was a good thing for the Scottish economy, and we would seek to restore it.

On your point about the border, I assume that you are talking about the common travel area. We have at present a common travel area that contains, among other territories, the UK and Ireland. Those two countries do not have identical immigration systems, and yet they coexist within the common travel area, which does not necessitate border controls. That is the position that Scotland would be in, as a member of the common travel area.

In this case, we do not have to speculate, as we have examples such as the Ireland-UK position

that show that that type of scenario works well, and there is no reason why it would not do so for Scotland, too.

Hanzala Malik: There is a natural border between the UK and Ireland, which shields the countries a little, but I will accept your answer on that.

Last week, we heard from some experts who were very enthusiastic in their explanations of how easy it would be for us to join the European Union and to be part of NATO. I almost thought that we would need to tie them to their chairs, they were so enthusiastic. However, when I asked whether they could guarantee that there would be no veto of a possible Scottish membership, they could not do so. Can you guarantee membership? If you cannot, have you made any move to try to find out how we can avoid facing a veto?

Nicola Sturgeon: Not a single member state has said, or even come close to suggesting, that it would veto the EU membership of an independent Scotland, and that includes Spain, although much has been made of late of the comments of the Spanish Prime Minister. I can set out the facts for you. There is nothing in the treaties of the European Union that allows—in the scenario that Scotland would be in—for the disapplication of the treaties or for Scottish citizens as European citizens to be deprived of their European citizenship.

We have a situation where no member state has even come close to hinting that it would veto Scotland's membership, and there are many reasons why it would be against the national interests of other European member states to do so. We have a situation where Scotland has been a member of the European Union and complied with all the laws of the European Union for 40 years. I can set out those facts and say to people, "Come to your own conclusions."

Hanzala Malik: Sorry, but can I interrupt you there? You say that we are a member of the European Union and that our citizens are nationals of the European Union. You say that we have worked with the European Union but, actually, we have not—the British Government has done that, not the Scottish Government.

Nicola Sturgeon: Of course, but the Scottish Government has responsibility for transposing European law into domestic law on a range of matters. My point is that Scotland is part of Europe just now as part of the UK. I have said that expressly on a number of occasions this morning, so I am not trying to use language that suggests otherwise. I do not deny that, but the point is that we comply with the entire body of European law and we have done so for 40 years. The Scottish

Government regularly transposes European law into domestic law.

The EU is an organisation that exists to expand and to enlarge and that was founded on the principles of democracy, respect for human rights and so on. The idea that it would turn round and say to Scotland, which has expressed a democratic desire to be independent, "We are going to put you outside the European Union" is simply incredible, politically and in the real world—even putting to one side the fact that there is no legal basis on which the EU could do that.

Hanzala Malik: I am sorry to press you on this but, as regards actual membership, I understand that we require all the members to agree to the membership of a new member, regardless of the circumstances. Is it fair to say that we do not have a very clear yes or no—meaning veto or no veto—from members for Scotland to be a new member?

Nicola Sturgeon: We have the fact that not a single member state has said that it would veto our membership. I would listen carefully to the comments of the Spanish Prime Minister. If he had wanted to, he would have been perfectly able to say that Spain would veto our membership when he made his other comments a couple of weeks ago. Other senior Spanish politicians have commented that, if the decision for Scotland to be independent was taken on an agreed and consensual basis, Spain would have nothing to say about it.

I am simply pointing out that we can debate these issues right up to the referendum—I daresay that we will and it is legitimate to do so—but the reality is that no member state is threatening to veto Scotland. No member state has even come close to doing that. When you look at the situation on a real-world basis, why on earth would they?

You know the city that we both represent and you know the constituency that I represent. I have constituents from many different European member states. If Scotland were suddenly to find itself outside the European Union, all those people would suddenly have no legal right to be here. The consequences of that not just for Scotland but for other member states and their citizens are such that it is an incredible proposition. In all these debates, I am struck by the fact that, when people say, "Ah, but you might be vetoed," and so on, none of them can put forward any evidence at all that suggests that that is a credible proposition.

Hanzala Malik: I accept that no one has said that they would veto Scotland's membership, but my point is that no one has guaranteed that everyone would agree to it, either. That is what concerns me, as a Scot. I do not want to find myself in no-man's-land. Has investigatory work been done that enables us to say categorically to

the electorate that we are guaranteed membership?

Nicola Sturgeon: As I say to anyone who asks me about this, I find the suggestion that Scotland would not be a continuing member of the European Union just incredible. I think that that is inconceivable.

You said that no member state has said that they would guarantee our membership. You are a man of the world, and you know that member states will take great care not to be seen to be interfering in the Scottish referendum, which is a domestic matter for Scotland. However, it is significant that no member state—not even Spain, which is frequently cited as being the one that might be problematic—has come close to saying that it would veto Scottish membership.

You said that you do not want to find yourself in no-man's-land. There is no possibility of that if Scotland votes to be independent. There is a significant possibility of it if we do not vote to be independent and are part of the in/out referendum on European Union membership that will take place in 2017.

Hanzala Malik: That is probably one of the most polite “no” answers that I have had for a while. Thank you.

Nicola Sturgeon: I always try to be polite.

The Convener: An interesting fact that was brought to the committee's attention at last week's meeting is that, in the event of any contravention of or challenge to EU citizens' rights, whether we are talking about the rights of Scots in Scotland or the rights of any other EU national who is living, working or studying in Scotland, the European Court of Justice would likely step in to ensure that citizens' rights were upheld. Professor Keating and Professor Tierney both deferred to Sir David Edward on that. Is it an issue that you have thought about? Can you give some Government insight on the matter?

Nicola Sturgeon: I do not know whether that is the case. I have read with great interest the comments of Sir David Edward, as I suggest that anyone who has an interest in the matter does. As far as I am aware, Sir David is not known to be a big supporter of independence, but he has a wealth of expertise on matters of European law. He has made powerful points about the obligation that there would be on the European Union to negotiate in good faith, before the point at which Scotland became legally independent, on issues to do with Scottish membership, and about the implications of Scotland being outside the European Union—I am not quoting him directly but paraphrasing what he said. Of all the people who have commented in the debate, he is someone

with unimpeachable credentials and who knows what he is talking about.

The Convener: I want to open up another front in our questions and talk about other aspects of the white paper that are relevant to the committee. International and foreign policy is obviously one such aspect. It will come as no surprise to you to hear that, in my professional and political careers, I have taken an interest in our responsibilities to, and the rights of, people who seek sanctuary in Scotland. One of the best things in the white paper is the proposal to close Dungavel and end dawn raids on the homes of vulnerable families because of the notion that they have had the cheek to seek sanctuary in Scotland. I welcome that.

Will you give us a wee insight into how Scotland will uphold EU standards on looking after people who seek sanctuary, or indeed do things a bit differently?

Nicola Sturgeon: I think that, when people flee torture or persecution elsewhere in the world and seek asylum here, we have an obligation to treat them with dignity and humanity. I am pretty sure that all members agree—I do not suggest that the Scottish Government has a monopoly in that regard.

The white paper sets out how an independent Scotland would go about that. We would have the opportunity to put in place a new model of asylum services, which would be separate from immigration services. We propose that a Scottish asylum agency would oversee asylum applications. The process would have to be robust as well as humane, and people would have to have confidence in it. We would work hard to continue to promote the integration of refugees and asylum seekers from the day of their arrival in Scotland and not just from the point at which they were granted leave to remain.

We would take the opportunity to close Dungavel and end the practice of dawn raids, which is inhumane, particularly when children and vulnerable people are involved. If a failed asylum seeker presented a risk to the public, there would be the ability to provide secure accommodation while steps were taken to remove them. If there was a need for forcible removal, such removal would have to be done humanely. We must have a robust process in place for processing asylum applications, but the process must also be humane. The process in the UK has sometimes fallen short of that obligation in recent years, particularly in the context of dawn raids.

10:00

Clare Adamson: We took evidence on human trafficking from the European commissioner. Trafficking is an area of significant concern across

Europe and the UK. Scotland has made its views on the matter clear and the white paper offers a way forward on how we deal with people who seek asylum. Do you have concerns about our ability to tackle trafficking if the UK were to leave the European Union in 2017?

Nicola Sturgeon: I will not repeat myself, but the UK coming out of the EU would have all sorts of unfortunate consequences for the UK as a whole and for Scotland, if we were still part of the UK.

I stress the need for all of us, whether or not Scotland is independent, to work co-operatively, not just across the UK but across Europe and internationally, to do everything that we can to combat the horrendous practice of human trafficking, which has horrendous implications for the people who are trafficked. The Scottish Government, with the responsibilities that we currently have, seeks to prioritise what we are able to do to be part of the global response to human trafficking. That is one of many areas in which continued close co-operation with our partners in the rest of the UK and across Europe will be vital.

Clare Adamson: At our meeting last week, Professor Keating gave examples to illustrate why a hole in the European Union would be damaging to the countries that remained in the EU. In the hypothetical situation in which Scotland was left outside the European Union, would the absence of co-operative working practices in Europe on human trafficking be damaging?

Nicola Sturgeon: It absolutely would. That is undoubtedly the case. There is no possibility of Scotland being left out of the European Union in the independence scenario, but you have given one of the many examples of areas that demonstrate why it is in no one's interests to be out of the European Union.

We will all debate the issue passionately over the next few months, and we know that pretty hard-headed issues come to the fore in negotiations. It is in no one's interests for Scotland not to be a continuing member of the European Union—economically, socially, culturally, in terms of citizenship or in the context of issues such as trafficking. It is in the interests of Scotland and every other member state of the European Union for Scotland to continue to be a member and play a co-operative and constructive part in it.

Willie Coffey: I will move on to broadcasting. In independent Ireland, people can switch on their tellies and watch their favourite programmes, such as “EastEnders”, “Dr Who” and “Strictly Come Dancing”. In an independent Scotland, will people be able to do that?

Nicola Sturgeon: Yes.

Willie Coffey: Thank you.

Scotland's public service broadcaster post independence will be known as the Scottish broadcasting service. What role will our public service broadcaster play in presenting the European dimension to the Scottish population, perhaps directly, and in presenting Scotland's image to our European partners?

Nicola Sturgeon: That would be a positive thing. As a “Borgen” fan, I think that the BBC is doing quite well in presenting Europe to Scotland at the moment. Having a Scottish broadcasting service with the relationship with the BBC that we set out in the white paper would allow our public service broadcaster in Scotland to present Scotland well and properly to Scotland and the world and to ensure that we had a window on international affairs. We have had a long-running debate in Scotland about having a Scottish six and having international affairs reported through that prism. In the white paper, we set out how such an arrangement would work and how it would be funded. It is incredibly important that we continue to have free-to-view services such as that. That is one of the many areas in which we think that Scotland has the ability to make decisions that not only are in our interest but enable us to work co-operatively with partners elsewhere.

Roderick Campbell: Last week, Professor Keating said:

“Remaining outside Schengen and in the single travel area would be a lot easier to negotiate than getting into Schengen.”—[*Official Report, European and External Relations Committee*, 5 December 2013; c 1573.]

Do you have any comments on that?

Nicola Sturgeon: Professor Keating made a sensible point about Schengen—indeed, a similar point could be made about the euro. Countries must meet certain criteria and fulfil certain conditions to be eligible for membership of those things. We have made it clear that we would not seek to be part of the euro or of Schengen—that is part of what we argue is continuity of effect. We are not arguing for special terms or terms that we do not currently enjoy as part of the UK. We want to continue with the current terms and conditions.

It makes strong common sense for Scotland to remain within the common travel area, and I do not think that there are any grounds on which the rest of Europe would take a different view. If the rest of Europe tried to force Scotland into the Schengen agreement—and if we set aside the fact that countries must do all kinds of things to be permitted to enter into such arrangements—that would create borders where none exist at the moment.

Throughout its existence, the European Union as an organisation has worked to bring borders

down rather than put them up where none exist, so the common travel area proposal that we have put forward is strong and is common sense. In response to Hanzala Malik's questioning, I spoke about the UK and Ireland as an example of how differences in immigration policy can coexist.

The Convener: Last week, we took evidence from Colin Fleming on the defence aspects of an independent Scotland. He had a clear understanding of Scotland's membership of international organisations and the timetable for removing Trident missiles from Faslane. Will you expand on those issues a wee bit to give us some insight into the Government's thinking?

Nicola Sturgeon: Our position on Trident is well known. We want Trident to be removed from Scotland as quickly as possible and we have set out the detail of that in the white paper. We do not think that that would conflict with an independent Scotland being a member of NATO, as the vast majority of NATO members are non-nuclear countries.

There are good and strong reasons why an independent Scotland should be a member of NATO and why NATO would benefit from an independent Scotland being a member, given our strategic position in the north Atlantic. I presume that the North Atlantic Treaty Organization would want one of the major countries in the north Atlantic to be a member of it, and we have set out our position on that.

The detail of the removal of Trident will require to be negotiated with the Westminster Government. We have said that we want that to happen as quickly as is safely possible, and the Scottish Campaign for Nuclear Disarmament has published reports about what it considers to be a reasonable timescale for the safe removal of Trident. We will negotiate that, but there is no doubt that we want Trident to be removed as quickly as possible.

Gavin Brown: You mentioned the euro in your answer to Roderick Campbell's question. You would not want to join the euro. In your view, would the Scottish Government be given a formal opt-out or a de facto opt-out?

Nicola Sturgeon: As you will know, because you have read the white paper, we have argued for continuity of effect. We say that the existing position for the UK, which has a formal opt-out, would continue to exist for Scotland. However, we also make the point that, regardless of whether a country has a formal opt-out, it is not possible to force it into the euro against its will. Sweden is the living example of that. The requirements for euro membership include some that it is entirely voluntary for member states to comply with.

Gavin Brown: Is it likely that we would be given a formal opt-out as opposed to a de facto opt-out?

Nicola Sturgeon: The argument for continuity of effect is strong. I ask members to imagine a scenario that does not exist. If the UK was a member of the euro and we were saying that, when Scotland became independent, we would want to come out of the euro, that would be a different and more difficult scenario to argue for, because it would change the relationship between the people of Scotland and the European Union pretty fundamentally. That is not what we are arguing for. We are not in the euro right now and we argue that the provisions that apply to us as part of the UK would continue to apply to us as an independent country. That is what we mean by continuity of effect.

If you are asking me whether I think that that is a likely outcome, I think that it is, because it is based on the prevailing circumstances. However, we go on to make the point, which nobody can gainsay, that Scotland cannot be forced into the euro, because one of the key criteria for euro membership—membership of the exchange rate mechanism for two years—is entirely voluntary. Whether we have a formal opt-out or, to use your language—it is not necessarily language that I would use—a de facto opt-out, the result is the same: Scotland will not be in the euro.

Gavin Brown: There is an important difference between the two. In the course of the meeting, you have quoted a number of experts who feel that we would be in the European Union. Has any of those experts or anyone else backed up your claim that we would get a formal opt-out?

Nicola Sturgeon: I can double-check what other people have said and come back to the committee. I am not trying to dodge your question but, to my knowledge, nobody has argued seriously that Scotland can be forced into the euro. We can have those dancing-on-the-head-of-a-pin debates or confront reality head on. The reality is that Scotland will not be in the euro because it cannot be forced into the euro. That position is as plain as the nose on your face.

Gavin Brown: I say gently to you that whether we would get a formal opt-out is not dancing on the head of a pin; it is critical. You should not be so frivolous about it.

Nicola Sturgeon: With the greatest of respect to you, I am trying to answer your questions as bluntly as I can. I have set out clearly what we mean by continuity of effect, which is arguing the position that the arrangements that currently apply to the UK would continue to apply to Scotland. I simply made the point that, even without—to use your terminology—a formal opt-out, the result would be that Scotland would not be in the euro.

The actual position on whether Scotland would be in the euro is what matters to people who are considering the issues and weighing up how to vote, and there is no way of cutting the debate that gets us to the position that Scotland would be forced into the euro.

Gavin Brown: If a country has a formal opt-out, it never has to join the euro; if it has a de facto opt-out, as in the case of Sweden, it has to give a commitment that, ultimately, it will join the euro. That is the fundamental difference.

Nicola Sturgeon: I have already said that we would operate on the basis of continuity of effect. That sets out what we consider the position to be. I believe that nobody thinks that Sweden will join the euro at any time in the foreseeable future.

I think that it was David Cameron who made the point that some countries have formal opt-outs and others have no likelihood of joining the euro. Sweden is in the latter category. It is accepted across the European Union that, because Sweden has chosen not to be in the euro, it will not be in the euro.

That simply makes the point that, regardless of whether we had a de facto opt-out, the result for the country would be that we would not be in the euro, because we could not be forced into it. On your specific question, I have set out clearly—as the white paper does—our position on continuity of effect.

10:15

Gavin Brown: Can you supply to us the list of people or experts who have said that we would get a formal opt-out and quotes from them?

Nicola Sturgeon: Okay. I look forward to receiving your list of people who have said that we will be forced into the euro, as well.

The Convener: We are quickly running out of time. Patricia Ferguson and a number of other members want to ask questions.

Patricia Ferguson: Deputy First Minister, you have stated that we will still be part of the common travel arrangement, that we will not have the euro and that all the other opt-outs that the UK has negotiated will apply to Scotland. Being able to assert that comes down to the method of accession that is appropriate for Scotland. It all comes down to whether the article 48 route will apply. I accept that no member country has said that it would use a veto, but has the Scottish Government spoken to those countries to see whether they agree that article 48 would be the correct route to follow?

Nicola Sturgeon: As an aside, I do not agree with the premise of your question—that the terms

on which an independent Scotland would make its transition to independent membership of the EU would depend on the route that was taken. Let us say—this is not what I argue—that article 49 were used. That would in no way, shape or form preclude Scotland from becoming an independent member on the basis of continuity of effect. What I am arguing in respect of continuity of effect does not depend on article 48 being the route. We set out article 48 because we think that it is the most valid and sensible route to take in the absence of anything in the treaties that deals with the precise scenario that we are talking about.

As for your question about discussions with other member states, we discuss a range of issues all the time with representatives of other member states. The Cabinet Secretary for Culture and External Affairs briefed ambassadors and consuls on the contents of the white paper shortly after its publication; I will not go into the detail of all that. Equally, other member states will rightly be careful about not unduly interfering in a domestic debate and decision for Scotland.

We are going over old ground. No country has said that it would veto Scotland's membership of the European Union, and it would be in no country's overall interests to do so.

Patricia Ferguson: I am not talking about a veto; I am talking about the way in which Scotland might join the EU. There is a huge difference of opinion in the EU on what that route should be. Many people in the EU to whom I speak think that article 49 would apply. If it did, it would be much harder, although not necessarily impossible, for an independent Scotland to negotiate all the remaining opt-outs, because the basis of the discussion would be very different. What I asked was: have you had discussions with member countries that lead you to believe that they would back Scotland in going down the article 48 route?

Nicola Sturgeon: That goes back to a question that I was asked earlier. The European Commission has said that it will give its legal opinion in response to a request from a member state. If we want to test the European Union's view on article 48 or whether there would be another valid route for Scotland to take, that would be the way to do it. I am happy to do that, but I need the UK Government to agree to ask for that opinion, as the UK is the member state now.

Patricia Ferguson: You have not asked individual member states about that.

Nicola Sturgeon: We have discussions with member states all the time. We set out in the white paper that it will ultimately be for the European Union to determine the correct route to take. A range of experts have made the point that, if the political will exists, Europe will find the best,

easiest and quickest legal route to take. That is what will happen. The idea that Scotland will be excluded from the European Union for technical, political or any other reasons does not have any—

Patricia Ferguson: No one is saying that.

Nicola Sturgeon: Perhaps we end up with these highly technical arguments—sometimes it feels like dancing on the head of a pin—from the Opposition because it knows that the central premise about Scotland's continuing membership of the EU is overwhelmingly strong.

Patricia Ferguson: With all due respect, no one is saying that Scotland will not be a member of the EU. However, as you said, it comes down to political will. I am asking whether the Scottish Government has begun to discuss with other member countries whether that political will exists. It is quite a straightforward question.

Nicola Sturgeon: I have already said that we discuss—

Patricia Ferguson: You have said that you have discussed many things, but you have not specifically said whether you have discussed that issue and, if so, what the answer has been.

Nicola Sturgeon: I actually said that we discuss a range of things, and I also said that Fiona Hyslop briefed member states on the contents of the white paper. By definition, such issues are therefore part of the discussions that we have.

I will not go into the detail of private discussions between Scotland and other member states. Other member states respect the fact that this is a democratic decision for Scotland to make. Equally, I have heard nothing from any member state at any point that would suggest anything other than that Scotland would be welcome as a continuing member state of the European Union. That is the bottom line, which is what people on the other side of the debate struggle to get around.

Patricia Ferguson: My question was about the route and, from what you have told us, you have not heard an opinion on that one way or the other from any member state.

Nicola Sturgeon: I have already told you that the correct way to get a legal opinion on the route is to ask the European Commission for one. I want to do that, but the member state, which is the United Kingdom, has to do it. If the Opposition party members who are here today want to join me in asking the UK Government to join us in asking for that opinion, that would be a pretty constructive and productive way forward. I can only speculate on why the UK Government does not want to get that opinion. Perhaps it thinks that such an opinion would not suit its purposes. I do not know; I can only speculate.

Roderick Campbell: What difficulties does the UK Government's position of no pre-negotiations cause?

Nicola Sturgeon: The UK Government frequently says that it wants as much clarity as possible. We all want as much clarity as possible, and the white paper provides clarity on a range of issues. What we have set out on our route to EU membership is robust, valid and strong. If we want to know what the European Commission thinks of it, the best thing to do is ask, but the Commission has made it clear that it will respond to that request only if it comes from a member state.

The UK Government cannot have it both ways. It cannot say that it wants clarity on what the European Commission thinks while also saying that it is not prepared to do what is required to get that. That is a pretty unsustainable position and I hope that it changes. If it does, I will be the first to welcome it.

Clare Adamson: The Scottish people overwhelmingly voted for the SNP on a manifesto of setting out the independence referendum. Given that the Edinburgh agreement puts an onus on both Governments to act in the best interests of the Scottish people, is there not a considerable amount of pressure on the UK Government to ask the European Commission the question, given that the Scottish people want the answer?

Nicola Sturgeon: Yes, I think that that would be the right thing to do. As I said, I can only speculate about why the UK Government will not do that. I am happy to go to the European Commission with the precise scenario, which it has asked for, and to ask for its view. However, that can happen only if the UK Government asks for it to happen. I imagine that, if that scenario were flawed, the UK Government would be keen to ask for the opinion. The fact that the UK Government is not keen perhaps suggests that it knows that the position is strong.

The Convener: We touched on the value of Scotland being part of other institutions across Europe and the world, such as the UN, the Nordic Council and the Arctic organisation—I do not remember its name. You touched on defence earlier, and climate change is also important, especially with regard to protecting that part of the world. We in the committee often have arguments about fish—it is always about fish—and, given that we are strategically and geographically part of the north Atlantic, our position would have an impact. My specific interest is in the UN and the need to adhere to UN standards on how people are treated and rights are upheld.

Nicola Sturgeon: This week, with the Scottish Human Rights Commission, I launched the new action plan on human rights for Scotland, which is

an impressive document. I made the point at the launch that, although we all have an obligation within our current responsibilities to promote and protect human rights, an independent Scotland—partly in the context of drawing up a written constitution—will have an opportunity to assert clearly and strongly our commitment to human rights. The European convention on human rights is the obvious example of something that could be incorporated in a written constitution, as it is already incorporated through the Scotland Act 1998.

We could have a debate in Scotland about whether there are other human rights standards, such as the UN standards, that we would also want to be reflected in that constitution. That would be a debate and a decision for Scotland as a whole, not just for the Government, and I think that that would be positive.

The Convener: You touched on having a human rights-based constitution for an independent Scotland. The committee took evidence on the way in which Iceland used a crisis situation to develop a new social contract with its people and to develop a constitution. I know that the First Minister has said that a final constitution should be written by the people of Scotland and not by whoever the Government of the day happens to be, but we have to set a standard and a framework for that constitution. Will you expand on that issue?

Nicola Sturgeon: We have set out in the white paper examples of participative processes for developing a constitution. We mention Iceland and the situation in Ireland, which has recently gone through a similar process.

We are one of the few countries in the world—I think that we might be the only one in Europe—that do not have a written constitution. As I am a lawyer by background, I am aware of the pros and cons of written constitutions, but independence would give us a good opportunity to go through the process of developing a written constitution that would set out the rights of citizens and the relationship between citizens and the state and which would protect some extremely important rights.

The Government has given its view on some of the things that could be in our constitution. It is important that we do not go too far down that road, because the constitution should not be the property of the Government; it should be the property of the people of a country, which is why the participatory process by which it is drawn up is almost as important as the eventual document.

The Convener: Thank you for coming to the committee today. We have knocked about a lot of ideas. The next inquiry that we will do concerns

Scotland's place in Europe, and you have given us some avenues to explore for that. If you could give us any further information to help us along the way, it would be gratefully received.

10:27

Meeting suspended.

10:35

On resuming—

Scottish Government Updates

The Convener: Item 3 is consideration of two reports from the Scottish Government. One is on horizon 2020 and the other is a response to the committee's inquiry into foreign languages in primary schools. Clare Adamson has some brief comments to make on the latter.

Clare Adamson: The Government's response on foreign languages is interesting. We are definitely moving from an in-principle stage to a roll-out and implementation phase.

I know that the matter is under consideration and that we have not confirmed our work programme with the Education and Culture Committee, but now would be a good time to hand the topic over because the European context has moved on to the education and implementation side.

The Convener: Do other members have any comments on either horizon 2020 or foreign languages?

Patricia Ferguson: Clare Adamson probably has a point about the foreign languages work, but I suggest that we keep an overview of the topic. I do not know whether it would be possible for the committee to have a rapporteur to the Education and Culture Committee, or am I right in thinking that some of our colleagues are on both committees and might be able to do that without too much extra work?

The Convener: Clare Adamson is the EU rapporteur for the Education and Culture Committee.

Patricia Ferguson: Sorry, Clare—I did not realise that. In that case, it would make perfect sense to do it in that way.

The Convener: The inquiry recommendations include a built-in requirement for the Scottish Government to provide an update on the progress that has been made, so we can ask for information on that in the six-monthly updates.

Are there any comments on horizon 2020? The committee did a huge piece of work on that; indeed, we held a very successful conference on it. When I read the report, the whole process seemed very familiar to me. One subject that came out of the horizon 2020 inquiry was how we can engage many more small and medium-sized enterprises, and I was surprised to see how much money has gone to them. Perhaps there is a bit of work to maintain, sustain and grow that. For clarification, I am commenting on what small and medium-sized enterprises got from framework

programme 7 and what—I hope—they can expect from the successor programme, horizon 2020.

Patricia Ferguson: I am interested in the innovation voucher scheme. That seems to make sense to me. It would be interesting to know—perhaps we will get this information as a matter of course—how many of the companies went on to successfully get money as a result of the seedcorn funding that they had through the scheme and what level of funding they got, in order to see how much the £5,000 awards are levering back in. It would also be interesting to follow those awards through to see what difference they make to individual businesses. Getting the money is one thing, but what people do with it is a quite different matter.

The Convener: Yes. Perhaps we could see some case studies. When we put our recommendations to the Scottish Government, the issue could be included as part of our six-monthly progress updates. I want to keep a close eye on the matter.

We had some comments from Professor Anne Glover, the chief scientific adviser to the president of the European Commission, and she suggested that there are great opportunities in Europe that we are perhaps not tapping into. The committee has tried to push the Scottish Government to ensure that it looks at every single avenue where we can secure funding, especially for research and innovation because, although we do pretty well there, we could do better.

Clare Adamson: I read some interesting articles by Professor Glover in the press last Sunday. I drew them to the attention of the clerks, so I hope that the issues will appear in future committee papers.

The Convener: Are there any further comments on the two Scottish Government reports, other than on the need to keep our fingers on the pulse and keep pushing for updates?

Clare Adamson: My apologies, convener. I drew those articles to the attention of the clerks to the Education and Culture Committee and not the clerks to this committee, so the information will appear in that committee's papers at some point.

The Convener: Okay. It would be great if you could share that with this committee.

Committee of the Regions

10:39

The Convener: Item 4 is consideration of a report on the Committee of the Regions. I hand over to Patricia Ferguson.

Patricia Ferguson: First, I have an apology, as I have just noticed a mistake in the sixth paragraph of the letter that I sent to the convener. My first COR plenary was in January 2013 and not January 2012. I had mentioned 2012 earlier in the letter; the mistake is just one of those things.

If members want any further information on the on-going discussions, I am happy to either get it for them or provide them with a link to where it is contained.

I was conscious that it took an inordinate amount of time to get my membership of the Committee of the Regions agreed, which seems to be a common problem, at least among the United Kingdom delegation—I am not sure whether it is a problem internationally—but I had not appreciated quite how labyrinthine the whole process is. It is important to learn from someone who has been there before. I hate to think what it would have been like and how I would have struggled if Stewart Maxwell, who is very familiar with the structures, had not already been there. I met some other colleagues along the way who helped, too. It really was difficult. However, I got my head round it quite quickly once I was there. I would not want to put off other colleagues who might want to take on the role in future years, because it is very interesting.

Among the interesting things that are happening is the developing relationship with our colleagues in the Convention of Scottish Local Authorities on shared issues and issues where we have a common perspective. That relationship has always been there, but it is fair to say that it is getting better. We now meet regularly and, for example, share information and briefings. We also do that with the Local Government Association, which provides some helpful information, support and background.

The Committee of the Regions has a really big workload and I doubt whether we or any two delegates from a country could know everything that is going on in it, no matter how hard we might try to do so. However, the committee's documentation is easily accessible to anyone who wants to see it through its web portal. I am happy to provide that information to colleagues if that would be helpful to them, and I encourage colleagues who have an interest in any of the subjects that are coming up to let Stewart Maxwell

or me know so that we can reflect on that when we are having the discussions.

It has been a fascinating X number of months on the Committee of the Regions. I am finding it very interesting. Apart from anything else, I learn a huge amount almost every day when I am at a meeting. Some of the smaller meetings are even more interesting than the big plenary sessions, as you might imagine.

The Convener: I can see from the calendar of events just how diverse and absolutely fascinating the subjects are, so you are absolutely right. You mentioned upcoming issues. Is there any way in which—this might be completely insurmountable—we could have a forward plan of the issues that are coming up so that we could look at that information before the committee meets rather than responding to any issues afterwards?

Patricia Ferguson: Absolutely. I think that all the commissions have forward work plans—the ones that I am involved in certainly do—so we tend to know in advance roughly what issues are coming up. I will check and, if I can provide that information, I will pass it on to the clerks.

The Convener: I was pleased to hear about the better working relationship with COSLA. A few weeks ago, as convener, I met David O'Neill, the COSLA president, who is seeking a much closer working relationship with this committee as well as the work that it is doing in the Committee of the Regions. There is a realisation that, if we have many heads in and about the structures in, as you put it, the labyrinth of Europe, that can only help us. We are doing a bit of work on how we can work a bit closer with COSLA and David O'Neill in particular. I look forward to that happening.

Willie Coffey: Has the broadband agenda been discussed? I see that the topic was on the agenda for the July plenary. At several previous meetings of our committee, Jamie McGrigor and I have raised the big cut—I think that it is a cut from €9 billion to €1 billion—to the information technology infrastructure fund that provides support throughout Europe. Is the Committee of the Regions aware of the issue of the deployment of broadband? Has it developed a view on how it might assist in the face of such a huge cut?

10:45

Patricia Ferguson: I will look back at the papers and provide the final opinion. I do not recall discussing the issue that you mention, perhaps because the €9 billion budget was a proposal rather than money that was actually there. We might have discussed the actual rather than the proposed budget, if you see what I mean, but in any case, I think that our discussion was more about how we might cut costs through simplifying

things. As I said, however, I will certainly provide you with the opinion for your interest.

Willie Coffey: Super.

Hanzala Malik: I recall a conversation in which I suggested that we get the person who the Scottish Government is employing to assist in this process to look into other funding streams or funding in kind. Have we taken any steps towards identifying that person and seeing whether they can assist us—or is that a “Not yet”? I think that it is a “Not yet”, isn’t it?

The Convener: It is a “Not yet”.

Hanzala Malik: Well, can we do that, please? Is this our last meeting before the recess?

Roderick Campbell: Yes.

Hanzala Malik: And when is our first meeting after the recess?

The Convener: We will meet on 9 January to discuss our work programme, so we can have a conversation then about how we take forward inquiries about structural funds.

Hanzala Malik: That would be helpful.

The Convener: As members have no further questions, I thank Patricia Ferguson for giving us a really good insight into the Committee of the Regions. It is helpful that, for the time being anyway, a member of this committee is a member of that committee. A wee forward plan would certainly give us some ideas about where we go on the matter.

“Brussels Bulletin”

10:47

The Convener: Agenda item 5 is consideration of the “Brussels Bulletin”. Do members have any questions or comments? I draw your attention to the section on the progress that is being made on horizon 2020 and how the funds are being split up.

Willie Coffey: A wee section on page 6 headed “Education, Youth, Culture and Sport Council” refers to

“New digital learning tools, such as Open Education Resources”.

There is not a lot of detail there, but it chimes with some of our work and thinking on glow, which is the Scottish open access framework for education. We know that glow is being redeveloped, but I want to alert the committee to the issue. I ask that we keep a wee eye on what the open education resource tools might be in a European context, because there might well be other technical solutions out there that offer such services and interactions for pupils and their parents in their learning environments.

The Convener: When we undertook our inquiry into foreign languages in primary schools, we found that some of the schools that we visited had links with other schools across Europe and they would send each other letters and emails and participate in lessons over the internet. Some of the smaller children—the five and six-year-olds—were whizz kids and were, for example, communicating via Skype with kids in other countries. What we saw there was beneficial and I certainly think that all these things give added value.

Roderick Campbell: I am afraid that I must admit my ignorance about the emissions trading scheme. I wonder whether the people who compile the bulletin could give us a wee bit more information about how it actually operates instead of simply saying that a particular proposal has been agreed.

The Convener: I suggest that we check that out with the Rural Affairs, Climate Change and Environment Committee clerks, because I believe that that committee has carried out work on that very issue. We might not need to go very far to get the information that you seek.

Clare Adamson: I suppose that this also brings us back to our inquiry into foreign languages in primary schools, but another area that I am interested in is the roll-out of Erasmus+. The bulletin says that the organisations involved in

“the implementation of Erasmus+ in the UK will”

primarily

“be the British Council and Ecorys”.

I wonder how we might feed into that work, particularly on the issue of foreign language assistants. It would be really interesting to find out how Scotland’s requirements are being met in the roll-out, because I know that the British Council was concerned about the drop in FLAs. The fact that only a few councils in Scotland now use them might be quite important as far as the roll-out is concerned.

The Convener: Perhaps we can write to the British Council and ask for a wee update on the issue, because it said that it was making progress as well. [*Interruption.*] The clerk has just told me that the British Council covered the issue in its most recent update, so perhaps we should look back at that and take things from there.

Clare Adamson: Given the comments that have been made about integration with COSLA, it is important that that information is shared with our partners.

The Convener: Let us check the recent update and see where we go from there.

Are members happy to recommend the “Brussels Bulletin” to other subject committees and, in particular, to draw the Rural Affairs, Climate Change and Environment Committee’s attention to the emissions stuff?

Members *indicated agreement.*

The Convener: Excellent. Thank you very much. We will now move into private session.

10:51

Meeting continued in private until 11:21.

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