The Committee will meet at 10.00 am in Committee Room 2.

1. **Declaration of interests:** Patricia Ferguson MSP will be invited to declare any relevant interests.

2. **Inquiry into international development:** The Committee will take evidence from—
   
   Linda Fabiani MSP, Minister for Europe, External Affairs and Culture

3. **Inquiry into the Services Directive:** The Committee will take evidence from—
   
   Almira Delibegovic-Broome, Advocate, and Michael Howlin, Advocate, Faculty of Advocates
   
   Sarah Fleming, Head of International Relations, and James McLean, Member, Services Directive Working Group, Law Society of Scotland
   
   and then from—
   
   Karen Wright, Manager: Government and European Relations, Scottish Natural Heritage
   
   Matt Ogston, Head of Information and Peter Campbell, Strategic Planning Legal Adviser, SEPA

4. **Brussels Bulletin:** The Committee will consider the Brussels Bulletin.
The papers for this meeting are as follows:

**Agenda item 2**
Inquiry into international development

**Agenda item 3**
Inquiry into the Services Directive

**Agenda item 4**
Brussels Bulletin
Background

1. At the Committee’s meeting on 4 September 2008, the Committee agreed to undertake an inquiry into international development issues.

2. The Committee consulted on possible issues for inclusion in the inquiry remit. A call for written evidence was made and Members held a round table discussion with stakeholders at the Committee’s meeting on 2 October 2007.

3. The remit for the inquiry was agreed at the Committee’s meeting on 30 October 2007 as: To take a strategic overview of international development issues within Scotland and to consider and report on the role of a Scottish Government international development policy and how value can be added to the international development work that is already on-going in Scotland. This will include consideration of the respective roles of:
   - Scottish Government (including a consideration of the UK context and roles of the UK Government/ Department for International Development and broader context of international development work undertaken by the House of Commons’ International Development Committee and European Parliament’s Development Committee);
   - Scottish Parliament (including relevant cross party groups and the Scotland branch of the Commonwealth Parliamentary Association (CPA));
   - Business and private sector;
   - Public (including education and health) sector;
   - Wider civil society, including charities, voluntary sector and community groups;
   - Philanthropic foundations;
   - Academic sector.

4. The Committee invited written evidence and received 27 submissions. Members considered the written evidence at its meeting on 19 February 2008 and agreed a schedule for oral evidence sessions, beginning at the Committee’s meeting on 4 March 2008.
5. Further information on the inquiry can be found on the Committee’s web pages.

6. This is the Inquiry’s final oral evidence session with the Minister for Europe, External Affairs and Culture as the final witness. The Committee will wish to note that the Scottish Government published its International Development Policy on 7 May 2008. A copy of the policy is attached at Annexe A.

Recommendation

7. The Committee may wish to consider the following issues which were highlighted in the call for written evidence during oral evidence with the Minister:

- What should the strategic aim of any international development policy be?
- How can a meaningful analysis of the needs of developing countries be made to inform any international development policy?
- How should efforts be divided between raising awareness of international development issues within Scotland and focusing resources on granting project funding to NGOs to undertake projects in developing countries?
- What are the most effective ways to raise awareness of the needs of developing countries and what Scots can do to help address these needs?
- Should an international development policy have a geographical focus?
- Should an international development policy have a thematic focus, such as on education, health, civil governance issues and, if so, how many and which themes should be included?
- How can Scotland develop an innovative approach to international development policy in order to raise awareness, maximise the impact of project funding and ensure the sustainability of projects?
- How should any Scottish Government international development policy be administered to ensure that it is efficient, accountable and transparent and meet agreed best practice standards?
- How can the European and External Relations Committee add value to the existing international development work within Scotland?

Committee Clerk
May 2008

Scottish Ministers are committed to advancing Scotland's place in the world as a responsible nation by building mutually beneficial links with other countries as outlined in the Scottish Government's International Framework. As part of that Framework, Scotland has a distinctive contribution to make in its work with developing countries recognising our global responsibility to work together to achieve the Millennium Development Goals (MDGs).

1.1 AIMS & OBJECTIVES

The Scottish Government recognises the longstanding commitment of organisations and individuals in Scotland to international development, building upon both the historical and contemporary relationships that exist between Scotland and many countries within the developing world. Scotland already contributes to UK efforts through the Department for International Development (DFID) and this policy reflects how the Scottish Government, as a devolved administration, can enhance Scotland's contribution to the global fight against poverty.

The International Development Policy outlines our intention to actively engage with this global agenda and defines the Scottish Government's distinctive contribution and approach to international development thereby providing support and solidarity to developing countries. The overarching aims and objectives of the policy are as follows:

Aims:

- To enhance Scotland's contribution to the global fight against poverty through activity which is clearly designed to support the achievement of the MDGs and economic growth in developing countries.
- To demonstrate Scotland's commitment to play its role in addressing the challenges faced by the developing world, recognising Scotland's identity as a responsible nation.

Objectives:

- To work in a focussed way with a small number of identified developing countries to provide support to those in greatest need and the most vulnerable, working through organisations in Scotland and in line with priorities of the respective countries.
- To develop Scotland's special relationship with Malawi, working with the Government of Malawi to achieve sustainable outcomes.
- To support and promote Scotland's contribution to Fair Trade with developing countries as a responsible nation in the world.
- To support key networking agencies for international development in Scotland recognising their role in information exchange and the
promotion of best practice in Scotland's contribution to the achievement of the MDGs.

- To assist with Scotland’s response to international humanitarian crises.
- To recognise and build upon Scotland’s links with the Indian subcontinent by working together with communities in Scotland to support development, and in turn help support an inclusive society in Scotland.
- To contribute to relevant in-country development policies and priorities and to complement the work of the UK Government and other international development programmes.

The Scottish Government will also seek to encourage greater partnership within the Scottish science base to enable a stronger contribution to development and poverty reduction.

1.2 KEY VALUES & PRINCIPLES

The international development policy has been designed to reflect the following values and principles:

- The needs and priorities of developing countries are paramount. Inevitably, Scotland will learn and benefit from the experience of working in partnership with developing countries, but these benefits will not detract from the development strategies and priorities identified by developing countries.
- We will focus our efforts to make the best use of limited resources and ensure we make a sustained and measurable difference. We are alert to the tension between developing a wider programme alongside a deeper and more focused engagement.
- The Scottish Government is committed to continuing to work with Malawi based on the unique and historical relationship between our two countries. We have confirmed our commitment to honour the Co-operation Agreement ring fencing at least £3 million per annum to support this, within this spending review period. The Scottish Government will continue to work with the Government of Malawi to develop a focused programme of engagement and will continue to review and monitor progress through the Joint Commission process, a mechanism which is strongly supported by the Government of Malawi.
- The policy will encourage the consideration and adoption of best practice in development with an emphasis on country-led identification of need, organisational and institutional capacity building and community-led development. For example, the sharing of knowledge and transfer of skills, the training of trainers and responding to the developing countries' assessment of how we might best support development. The Scottish Government will also look to the development sector in Scotland, through the Network of International Development Organisations in Scotland (NIDOS), for their input regarding their experience of operating different models of development in their countries of operation.
• The policy, and more detailed funding guidance, will take due consideration of the impacts of climate change on the developing world.
• The policy will complement the work of others and not duplicate effort or undermine existing initiatives or government policy. Although international development is a reserved issue under the Scotland Act (1998), the Scottish Government is operating in accordance with the Act by "assisting the Crown in relation to foreign affairs" and will continue to ensure that the policy is developed within those given powers.
• The Scottish Government will continue to support Scotland becoming a Fair Trade Nation through its support of the Scottish Fairtrade Forum.
• Scottish Ministers have increased the International Development Fund within the life of this Parliament, to support the delivery of this policy with a commitment to the operation of transparent and accountable funding processes. The policy will adopt a deeper and more focused approach to the delivery of the policy, continuing to work through organisations in Scotland, based on the development strategies and priorities of developing countries. Whilst the Scottish Government recognises that working through organisations in Scotland may limit the range of work which can be funded, this model is essential to ensure that the Scottish Government is focusing its efforts and working to the stated policy aim of enhancing Scotland's contribution to international development.

1.3 SCOPE OF POLICY

The following broad criteria have informed the areas of operation:

• The nature of the relationship with Scotland, both historical and contemporary.
• The levels of poverty as defined by the UN Human Development Index for 2007/2008 as measured through life expectancy, educational attainment and income.
• Relevant activity and expertise within Scotland.

The policy will comprise six distinct elements listed below. This approach will ensure that all policy activity and funding criteria can closely reflect the needs of each country and/ or region. It will also enable the Scottish Government to more clearly demonstrate the impact of the International Development Fund. Further details will be published on the website.

• Sub-Saharan Africa Development Programme - Zambia, Tanzania, Rwanda and Darfur region of Sudan (block grant funding)
• Malawi Development Programme (maximum of two targeted grant rounds per year and competitive tendering exercises to commission work in line with priorities developed with the Government of Malawi as and when required).
• Fair Trade Scotland Programme (support to be channelled through the Scottish Fair Trade Forum based on formal application and assessment).
• Core Funding for Scottish-Based Networking Organisations (specific applications and assessment as required).
• Response to International Humanitarian Crises (one-off and short-term allocations based on a formal proposal and assessment process).
• Indian Subcontinent Development (geographical priorities and operational procedure to be developed in discussion with key stakeholders).

1.4 INTERNATIONAL DEVELOPMENT FUND (IDF)

The delivery of the policy will be supported by the International Development Fund which will be dispersed through tailored funding arrangements for each element. Total allocation per financial year (1st April to 31st March) will be as follows:

2008/09 - £6 million
2009/10 - £6 million
2010/11 - £9 million

Three main funding mechanisms will be adopted as follows:

• Challenge Fund Model - a funding round is announced with pre-defined criteria outlining broad areas of interest. Any organisation meeting the basic eligibility criteria may bid for funds. There is no limit to the number of organisations who can bid.
• Targeted Competitive Tendering - a requirement for a specific piece of work is identified with the developing country. Organisations working in relevant sectors will be invited to express an interest in bidding and those that meet the basic criteria will be invited to bid for the required work. Usually 4 or 5 organisations will be invited to bid in any one exercise.
• Block Grant Funding - a direct grant will be awarded (through a competitive process) to a key organisation or a consortium of organisations to deliver a strategic programme. Decisions as to how the grant is spent will be under the direction of the organisation/s holding the block grant.

Eligibility requirements and funding criteria for each scheme will be published on the Scottish Government website along with available budget, anticipated timescales for funding decisions and information on the process for decision-making. This information will also be made available to NIDOS and to the Scotland-Malawi Partnership (in relation to the Malawi Programme). This will enable both organisations to alert their members. Any contractual commitments that began prior to the introduction of this policy will be honoured until their contractual completion.
1.5 FUNDING ASSESSMENT PROCESS

The Scottish Government is committed to fair and transparent processes for all funding activity. Funding criteria for each funding round and information on the process will be published on the Scottish Government website. It is anticipated that external assessors will be contracted to assess bids in the main funding rounds. This excludes individual contracts to networking agencies in Scotland, support to the Scottish Fair Trade Forum and specifically commissioned work for the Malawi programme which will undergo internal assessment by officials, seeking advice where appropriate. The cost of contracting external assessors will not be drawn from the International Development Fund. Assessment forms will be available on request on completion of each funding exercise.

1.6 PROJECT MONITORING & INDEPENDENT EVALUATION

The Scottish Government is committed to rigorous monitoring and evaluation procedures for all Scottish Government funded activity. Six monthly and annual reporting for all projects will continue, with a revised reporting format. Details of reporting requirements will be published on the Scottish Government website and adherence to these requirements will remain a condition of the grant contract. A formal evaluation of the policy will also be developed to support the policy. The cost of this activity will not be drawn from the International Development Fund. Further information will be provided on the Scottish Government website.

1.7 MINISTERIAL GROUPS TO SUPPORT THE POLICY

The Scottish Government recognises the important role played by all previous advisory groups. The new policy will be supported by two distinct groups with clear and focused remits.

An International Development Advisory Group (IDAG) will be set up, drawn from the external international development sector and other interested parties, to be chaired by the Minister. Members will be asked to join the group by invitation of the Minister. This group will provide support and advice to the Minister across all six elements of the international development policy including the Malawi programme. It is not proposed that this group take on the assessment of individual funding applications or funding decisions. It is suggested that the group meet twice a year. Membership will be published on the Scottish Government website.

An additional group to provide support on the Malawi programme will also be set up - the Scotland-Malawi Advisory Group (SMAG). This group will also be chaired by the Minister but will take a more informal format and provide a mechanism for more informal brainstorming and discussion. Members will be invited by the Minister to join the group which will meet as and when required. It will also be supported by e-mail discussions. It is not proposed that this group reports to the main group, but that it remains a standalone group in recognition of Scotland's special relationship with Malawi.
Acknowledgements

This policy has been developed following consideration of responses to the public review (conducted from August to October 2007), and the experience of operating the policy to date. The Scottish Government is grateful to all individuals and organisations who contributed.

May 2008
European and External Relations Committee

11th Meeting, 2008 (Session 3)

Tuesday 27 May 2008

Services Directive

Background

1. At its meeting on 19 February 2008 the Committee agreed to conduct a short inquiry on the Scottish Government’s approach to the transposition and implementation of the Services Directive.

2. A summary of some of the key issues raised by the Services Directive is attached at Annexe A.

3. A Call for Evidence was launched on 26 February 2008 and written submissions were received from the Law Society of Scotland, SEPA and Scottish Natural Heritage. In addition, the Faculty of Advocates supplied the response they had submitted in connection with the UK Government’s consultation on the implementation of the services directive discussed below. Please note that this latter submission responds to specific questions raised by the UK Government (also attached). The collated written submissions are attached at Annexe B.

4. The purpose of this session is to take evidence from the Law Society of Scotland, SEPA, Scottish Natural Heritage and the Faculty of Advocates.

Issues for discussion: remit of the inquiry

5. Members will recall that the Services Directive was agreed on 12 December 2006 and must be implemented into domestic law by 28 December 2009. This is a far reaching Directive the aim of which is to develop a single market in the services sector by breaking down barriers to cross-border trade within the EU thereby making it easier for businesses to set up in another Member State or to provide services across borders on a temporary basis.

6. The transposition and implementation of the Directive will have implications for the devolved administrations. Members will recall that in its evidence to the Committee on 27 November 2007 as part of the transposition inquiry the Law Society of Scotland stated that:
It is clear that a number of issues will require UK-wide implementation. However, the different legal and regulatory structures in Scotland in many areas will require differential implementation and it is also reasonable to assume that separate discussions will be required with affected organisations in Scotland to ensure that all appropriate issues are covered. In addition, where the Directive does cover an area of devolved competence, it may be that the Scottish Government will wish to take a different approach to that adopted by the rest of the UK on some issues.

7. Members will also recall that on 5 November 2007 the UK Government launched a consultation on its proposals for implementing the Services Directive in the UK. The consultation document states that implementation is primarily the responsibility of the UK Government but that responsibility for certain legislation within the scope of the Directive is devolved. The UK Government indicates that it is in discussion with the Scottish Government in developing policy for implementation.

8. The remit of the inquiry is to examine the transposition and implementation of the Services Directive as it relates to Scottish interests. In particular, the Committee is seeking responses to the following questions—

- What are the key issues of relevance to Scotland raised by the Services Directive?
- What are the key issues for Scottish stakeholders during the transposition process?
- Should the Services Directive be implemented on a UK-wide basis or should devolved aspects be implemented by the Scottish Government? What are the advantages and disadvantages of each approach?
- Should there be a Point of Single Contact in Scotland?
- Should there be national liaison points to cover Scotland?
- What discussions have stakeholders had or plan to have with the Scottish Government on how the Directive should be implemented; in particular, whether it should be implemented on a UK-wide basis?
- Any comments on the Scottish Government’s responses to the Convener’s letter.

Issues for discussion: Inquiry into the transposition of EU directives

9. Given the Committee’s recent inquiry into the transposition of EU directives, Members may also wish to explore the extent to which the report’s findings and recommendations are pertinent to the Scottish Government’s role in the transposition of the Services Directive.

http://www.scottish.parliament.uk/s3/committees/europe/reports-08/eur08-01.htm

10. Members will recall that the inquiry reaffirmed the need for the Scottish Government to ensure that Scottish interests are accounted for “upstream” at both the policy development stage and within the formal European legislative process. In particular, the report emphasised the importance of “early engagement” and its direct correlation with effective implementation. The Committee also considered that there should be for
greater transparency of the Scottish Government’s role throughout the EU legislative process including at transposition stage, with specific recognition of the corresponding scrutiny function of the Scottish Parliament.

11. The Committee made a number of specific recommendations in relation to Scottish Government engagement with stakeholders throughout the EU legislative process. In particular, the Committee recommended that the proposed Scottish Government transposition guidance should explicitly recognise the importance of early stakeholder engagement and emphasise that this engagement should start during the EU policy development stage. The Committee also recommended that the Scottish Government procedures should recognise the clear role for the Government in co-ordinating the activities of stakeholder groups in promoting Scottish interests during the EU policy development stage. Members may wish to explore the findings of the report in relation to stakeholder engagement with these witnesses and the extent to which they were involved during the formulation of the Services Directive.

12. The Committee also raised concerns expressed by some witnesses about the role of the Scottish Government in those cases where it had elected to rely on section 57(1) or simply where transposition was UK Government driven. Given that the UK Government is apparently taking the lead on the transposition of the Services Directive, Members may wish to explore with these witnesses the nature and extent of the Scottish Government’s role.

13. Finally, a key recommendation of the report was the introduction of a transposition plan by which the Scottish Government would formally notify the Parliament of its plans for transposition, including engagement with stakeholders. Members may wish to explore the extent to which a transposition plan would have been of assistance in the relation to the transposition of the Services Directive.

Issues for discussion: correspondence with the Scottish Government

14. During the evidence session, Members may also wish to refer back to the Committee’s correspondence with the Scottish Government on its plans for the transposition of the Services Directive. The correspondence is attached at Annexe C. In her letter to the Committee of 28 January 2008 the Minister indicated that at that stage there was no formal agreement on how implementation would be delivered in relation to any devolved functions and that a view would be taken once the Scottish Government had a clearer indication of the volume of legislation that was affected and requiring change and once policy officials had had discussions with and taken advice from legal colleagues on how best to proceed.

15. The Minister further indicated that the Scottish Government had had no discussions with Scottish stakeholders on how the Directive should be
implemented and, in particular, whether it should be implemented on a UK-wide basis. The Minister indicated, however, that Scottish Government officials planned to arrange a presentation from BERR to CoSLA and other Competent Authorities in due course. Members will note that the submissions from SEPA and SNH refer to a seminar that took place in the CoSLA offices on 15 April 2008.

16. Members may therefore wish to seek an update from these witnesses on the progress of the transposition of the Services Directive subsequent to their submissions.

Recommendation

17. The Committee is invited to note the above information during the evidence session with SEPA, the Faculty of Advocates, Scottish Natural Heritage and the Law Society of Scotland.

Committee Clerk
May 2008
Summary of the key issues: Services Directive

1. The following note is a summary of some of the key points raised by the Services Directive.

2. According to the European Commission, the objective of the Services Directive is to achieve a genuine Internal Market in services by removing legal and administrative barriers to the development of service activities between Member States. To assist Member States with the implementation of the Services Directive the Commission has published a Handbook.

Services covered

3. The Directive defines “service” as “any self-employed economic activity, normally provided for remuneration”. It covers a wide range of different services provided to consumers and to businesses such as management consultancy, advertising, recruitment services, legal services, estate agencies, construction (including the services of architects) and security services.

4. The Directive does not cover those services, such as public administration or public education, which are of a non-economic nature, i.e. provided by the State in fulfilment of its public mission without any economic consideration. Furthermore, it does not cover financial services or transport.

5. The Directive covers different types of service provision including:

- where the provider establishes in another Member State;
- where the provider moves temporarily to the country where the customer is located;
- where the provider provides services at a distance from his country of establishment, for example over the internet, by phone, or through direct marketing;
- where the provider provides services in his home Member State to a customer who has travelled from another Member State (such as hotels, theme parks or other tourist attractions, as well as health services).

Changes to the legislative regime

6. The implementation of the Directive will require Member States to take a combination of legislative and non-legislative, that is, organisational or practical, measures. Members may also need to adapt existing specific legislation containing “requirements” which the Directive explicitly requires to be modified or abolished. The concept of “requirement” covers any obligation, prohibition, condition or any other limitation provided for in law,
regulation or administrative provision at national, regional or local level. The Commission handbook highlights that particular attention needs to be paid to legislation which contains specific rules for service providers established in other Member States. Where such rules are not based on other Community instruments and are incompatible with the Directive they will need to be abolished by amending the legislation concerned.

Simplification to administrative regime

7. The Directive sets out a significant programme of administrative simplification and modernisation. It requires Member States to simplify administrative procedures, to set up “points of single contact”, to provide for the possibility to complete procedures at a distance and by electronic means and to make information on national requirements and procedures easily accessible for service providers and service recipients.

8. These provisions apply to all “procedures and formalities” necessary for access to and exercise of a service activity, for all services covered by the scope of application of the directive whether imposed at central, regional or local level. The concept of procedures and formalities is a broad one and includes any administrative step which businesses are required to take, such as submission of documents, filing a declaration or registration with a competent authority. It covers not only procedures and formalities which are a pre-condition for the exercise of the services activity but also those imposed at a later stage, in the course of the exercise of the activity, or even upon its completion. Therefore, Member State will have to examine all of these administrative requirements and assess whether they are necessary or whether they can be abolished and replaced with something less burdensome.

Competent authorities

9. The Directive defines “competent authority” as “any body or authority which has a supervisory or regulatory role in a Member State in relation to services activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof.”

Points of single contact

10. The “points of single contact” (PSC) are meant to be the single institutional point from the perspective of the Services Provider so that he does not need to contact several competent authorities or bodies to collect relevant information and to complete all necessary steps relating to his service activities. The PSC need to be available for all service providers whether established in the Member State’s territory or in the territory of another Member State. In this regard, the Commission’s guidance emphasises that
it is important that information available through PSCs is available in other Community languages. Each Member State is free to decide how to organise the PSCs and may choose, for example, to have different PSCs for different sectors (ie. for regulated professions and for commercial activities).

**Freedom of Establishment**

11. The Directive requires Member States to review requirements relating to the establishment of service providers whether imposed at a national, regional or local level. The provisions on establishment also apply to rules enacted by professional bodies and other professional associations or organisations which regulate access to a service activity or the exercise of that activity.

12. In particular, Member State must review their existing “authorisation schemes”. This term encompasses any procedure under which a provider or recipient is in effect required to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise of that activity. The Directive provides that authorisation schemes may be maintained only if they are non-discriminatory, justified by an overriding reason relating to the public interest and proportionate.

13. The Directive sets out the requirements that will need to be evaluated by Member States. These include, for example, obligations to apply fixed minimum or maximum tariffs imposed by legislation or professional rules for the provision of certain services.

**Free Movement of Services**

14. The Directive provides for the freedom to provide cross-border services without unjustified restrictions. In particular, the Directive requires Member States to abstain from imposing their own requirements on incoming service providers except where justified for the protection or public policy, public security, public health or the environment. Even where such justification exists, requirements can only be imposed if they are non-discriminatory and proportionate.

**Quality of Services**

15. The Directive lays down a set of measures “to foster the high quality of services and to enhance information and transparency relating to service providers and their services”. So, for example, legislation will be amended to ensure service providers make information available and respond rapidly to complaints. Member States will have to review and adapt, if necessary, their legislation in order to avoid duplication of insurance obligations. Members States will also have to take some active steps to encourage providers to put in place voluntary quality-enhancing measures. The Commission suggests that possible measures could include organising
awareness campaigns and the promotion of quality labels, codes of conduct and voluntary standards.

**Administrative Co-operation**

16. The Directive emphasises the importance of administrative cooperation between competent authorities in different Member States. The Commission guidance indicates that this should ensure effective supervision of service providers based on accurate and complete information making it more difficult for rogue traders to avoid supervision and, at the same time, help avoid multiplication of controls on service providers.

**Review of legislation**

17. As a result of the Directive, Member States will have to review their legislation in a number of areas. On the one hand, there is the obligation to review authorisation schemes and certain establishment related requirements. On the other hand, Member States have to review requirements that they apply to service providers which are established in another Member States and provide services in their territory. Member States need to report to the Commission on their view of national legislation by 28 December 2009 at the latest.

**UK Government consultation**

18. On 5 November 2007 the UK Government launched a consultation on its proposals for implementing the Services Directive in the UK.


19. The detailed consultation document sets out the obligations on the UK under the various elements of the Services Directive and seeks input from stakeholders through questions and discussion of options as well as including proposals for implementation where these have been formulated. The consultation document identifies four principal parts to the implementation of the Directive:

- Establishing Points of Single Contact (PSC);
- Ensuring the UK is capable of participating in administrative cooperation procedures;
- Implementing proposals ensuring the high quality of services and rights for service;
- Ensuring all UK legislation, licensing regimes and administrative practices are compliant with the requirements of the Directive.

20. The consultation document states that implementation is primarily the responsibility of the UK Government but that responsibility for certain
legislation within the scope of the Directive is devolved. The UK Government indicates that it is in discussion with the Scottish Government in developing policy for implementation.

21. In relation to devolved matters, the consultation document identifies a number of issues on which it is consulting. These include whether there should be separate Points of Single Contact to cover Scotland and the other devolved administrations (page 33) and separate national liaison points to cover Scotland, Wales and Northern Ireland (pages 42-43 and 45). The Scottish Government will also be responsible for screening Scottish legislation, licensing regimes and administrative practices to ensure they are compliant with the requirements of the Directive. The UK Government states that it is working with the devolved administrations across the whole scope of implementation and will continue to do so following consultation.

22. The UK Government has also published an Impact Assessment which takes into account associated costs in relation to the devolved administrations.

Written Evidence

Written submissions were received from the following:

- Scottish Environment Protection Agency (SEPA)
- Scottish Natural Heritage (SNH)
- Law Society of Scotland
- Faculty of Advocates

SUBMISSION FROM SCOTTISH ENVIRONMENT PROTECTION AGENCY (SEPA)

The Scottish Environment Protection Agency (SEPA) welcomes the Scottish Parliament European and External Relations Committee Inquiry into the Transposition of the Services Directive and its invitation to provide written evidence.

As you know, from evidence submitted to the recent Committee Inquiry into the Transposition of EU Directives, much of SEPA’s work stems from the implementation of EU Directives (the Directive).

The current lack of clarity about the implementation of the Services Directive’s requirements means we are uncertain about their impact on our activities. Indeed, it is only recently that it has been brought to our attention that SEPA is a Competent Authority in implementing this Directive, and this should have been recognised within the recent Department for Business, Enterprise & Regulatory Reform (BERR) consultation.

As this is an emerging issue for SEPA, we are not able to give as full a response to your inquiry as we would like as we are still identifying within our Agency, and with colleagues in our sponsor division in Scottish Government, what the potential implications are. However these are our views on the questions you raise:

What are the key issues of relevance to Scotland raised by the Services Directive?

Relevant issues for Scotland include: whether there should be separate Points of Single Contact to cover Scotland and the other devolved administrations and separate national liaison points to cover Scotland, Wales and Northern Ireland. The Scottish Government is also responsible for screening 1 Scottish legislation, licensing regimes and administrative practices to ensure they are compliant with the requirements of the Directive.

SEPA has yet to be advised what Scottish environmental legislation is within the scope of the Directive and the potential impacts on our licensing regimes

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1 The Directive required Member States to “screen” all their legislation and practices affecting services and to check whether discriminatory, unnecessary or disproportionate barriers remain. Requirements that cannot be justified under the terms of the Directive should be repealed or amended.
when screened against the requirements of the Directive. It is likely that most of our licensing regimes will meet the screening criteria and that most potentially discriminatory requirements can be justified under a provision for ‘protection of the environment’, but that exercise has not yet been undertaken as far as we are aware.

What are the key issues for Scottish stakeholders during the transposition process?
The key issue is that there is no clear picture yet of what implementation looks like in a Scottish context and many stakeholders are probably not aware of what the potential implications are as this Directive appears to have “slipped through the net” of many organisations. As the Committee is aware, the four principal parts to the implementation of the Directive were set out in BERR’s consultation:

- Establishing Points of Single Contact (PSC);
- Ensuring the UK is capable of participating in administrative cooperation procedures;
- Implementing proposals ensuring the high quality of services and rights for service;
- Ensuring all UK legislation, licensing regimes and administrative practices are compliant with the requirements of the Directive.

SEPA is a Competent Authority for service activities that may be in the scope of the EU Services Directive. However, uncertainty about the scope of exemptions will need to be resolved before we can determine the full impact of the Directive’s requirements on our activities (e.g. regimes requiring amendment of guidance or online completion of application procedures).

Should the Services Directive be implemented on a UK-wide basis or should devolved aspects be implemented by the Scottish Government? What are the advantages and disadvantages of each approach?

We consider that implementation of the Services Directive is primarily the responsibility of the UK Government, but there are implications for the devolved administrations and we are informed that the UK Government is in discussion with the Scottish Government Enterprise and Industry Division in developing policy for implementation.

Overall, regardless of the approach, developing practicable and cost-effective solutions to meet the requirements by the December 2009 deadline is crucial to the effective implementation of the Directive and delivery of benefits. If a UK-wide approach is taken we have asked that BERR works closely with all UK Competent Authorities, including SEPA, in the further development of implementation proposals; how such an approach will affect governance arrangements for Scottish Competent Authorities such as SEPA remains to be seen.

Should there be a Point of Single Contact in Scotland?
No, we do not believe this is necessary. We recommend that the Point of Single Contact is established as a UK-wide “portal”, with signposting to websites of Competent Authorities. This would prevent duplicating information already provided by these authorities and avoid the danger of providing out-of-date information. A joined up approach is needed with related initiatives like the Business Simplification Support Programme for England and Wales, the Infrastructure for Spatial Information in Europe Directive and other related e-Government initiatives to prevent duplication and exploit synergies. We understand that for procurement purposes the Scottish Procurement Directorate has established a single portal for the public sector in Scotland; this may also be relevant to the Single Point of Contact and National Liaison Point proposed.

Also relevant are “better regulation” initiatives that are constantly challenging the processes that accompany SEPA’s management of regulatory regimes in order to make them less onerous for the customer. SEPA can now accept applications for CAR\(^2\) Registrations and Waste Exemption Licences on-line via its website. SEPA is also working with other NDPBs, National Park Authorities and Government Departments in providing a joined up single environmental and rural service to rural land managers and other related customers.

**Should there be national liaison points to cover Scotland?**

As above, we do not think this is necessary.

**What discussions have stakeholders had or plan to have with the Scottish Government on how the Directive should be implemented; in particular, whether it should be implemented on a UK-wide basis?**

We understand that BERR will be conducting more detailed discussions with Departments and Competent Authorities over the coming months. SEPA has asked to be included in any seminars or meetings that are to be held in Scotland to assist with implementation; SEPA staff will be attending the BERR/Scottish Government seminar on 15 April at the CoSLA offices in Edinburgh. We hope to have, for example, specific guidance from the Scottish Government, or others, on what does and does not represent practice that conforms to the principles of the Services Directive. No discussions have taken place with the Scottish Government on whether implementation should be on a UK-wide basis.

As we have said in submitting evidence for the Transposition inquiry, clearly it is the responsibility of Government to ‘transpose’ Directives, but SEPA, as a Competent Authority, does have an essential role to play in the transposition process. Effective and full engagement at an early stage enables full use to be made of SEPA’s technical, legal and administrative expertise. In addition, SEPA’s involvement in transposition of Directives that it will itself be enforcing

\(^2\) The Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR)
allows both SEPA and Government to be certain that a particular regulatory regime is one that will work on the ground.

Any comments on the Scottish Government’s responses to the Convener’s letter

We have no further comments to make.

I hope that you find this evidence from SEPA to be useful.

SUBMISSION FROM SCOTTISH NATURAL HERITAGE (SNH)

Scottish Natural Heritage (SNH) welcomes the Scottish Parliament European and External Relations Committee Inquiry into the Transposition of the Services Directive and for the invitation to provide written evidence.

At this stage we are not clear about the implications and impacts upon our activities with respect to SNH being named as a Competent Authority under the Directive. As such, we are not able to give as comprehensive a response to your inquiry as we would like. However, we are currently identifying, both internally and with colleagues in the Scottish Government, what the potential implications are, and should have a clearer picture in the near future. However, in the meantime, our initial views are set out below and we hope you find them helpful.

What are the key issues of relevance to Scotland raised by the Services Directive?
There are two that we are currently aware of: firstly, the Scottish Government is responsible for screening Scottish legislation, licensing regimes and administrative practices to ensure they comply with the requirements of the Directive. At this stage, we are unclear what environmental legislation may be within the scope of the Directive. Secondly, whether or not there are separate Points of Single Contact to cover Scotland and the other devolved administrations, and separate national liaison points to cover Scotland, Wales and Northern Ireland.

What are the key issues for Scottish stakeholders during the transposition process?
One key issue is to ensure that all Scottish stakeholders are made aware of the requirements of the Directive and of any measures they might need to take to comply. For example, SNH has been named as a Competent Authority and we are taking active steps to clarify the implications. However, there may be other stakeholders who are as yet unaware.

SNH is a Competent Authority for service activities that may be within the scope of the Services Directive. We, and other stakeholders, will need to determine the scope of the exemptions before being able to determine which activities may be affected.
Other implications for stakeholders as service providers could be in terms of information provision and the resource impacts of this. However, we are not clear at this stage whether the requirements of the Directive are any more burdensome that those required under existing legislation on access to information.

There may also be implications for stakeholders as a service consumer, rather than a provider. These would be mainly related to issues of personnel and procurement.

Should the Services Directive be implemented on a UK-wide basis or should devolved aspects be implemented by the Scottish Government? What are the advantages and disadvantages of each approach?
We understand implementation of the Services Directive is primarily the responsibility of the UK Government, but there are implications for the devolved administrations. However, it is important that the adopted approach ensures implementation is efficient, cost effective and practical.

Should there be a Point of Single Contact in Scotland?
We believe that a single point of contact should be a UK-wide ‘portal’, with signposting to the web sites of Competent Authorities. This would avoid duplication of information already provided by these authorities and ensure that the information provided is accurate and up to date.

Should there be national liaison points to cover Scotland?
On the basis of our answer to the previous question, we do not think that a national liaison point in Scotland would be necessary.

What discussions have stakeholders had or plan to have with the Scottish Government on how the Directive should be implemented; in particular, whether it should be implemented on a UK-wide basis?
We have had discussions with Scottish Government staff over recent months and had asked to be included in any seminars or meetings that might be arranged with stakeholders. We are thus pleased to be attending the BERR/Scottish Government seminar on 15 April at the COSLA offices in Edinburgh, where we anticipate the implications for SNH will become clearer. We have had no discussions with the Scottish Government on whether implementation should be on a UK-wide basis.

Any comments on the Scottish Government’s responses to the Convener’s letter (see link above)?
We have no comment to make on this letter.

I hope you find this evidence useful. If you require further information on our response, please do not hesitate to contact me.

SUBMISSION FROM THE LAW SOCIETY OF SCOTLAND (“THE SOCIETY”)
INTRODUCTION

The Law Society of Scotland (“the Society”) welcomes the opportunity to put forward evidence to the European and External Relations Committee of the Scottish Parliament (“the Committee”) as part of its inquiry into the transposition of EU Services Directive.

GENERAL COMMENTS

The Society has considered the Services Directive since it appeared as a Commission proposal in 2004, recognising its potential effects on the legal profession in Scotland and the Society’s own rules. This has involved discussions with the then Department of Trade and Industry and Scottish Executive Justice Department and, in 2005, the proposal of an amendment to the text of the Directive to ensure that it did not adversely affect the Society’s Guarantee Fund which protects clients from the financial consequences of dishonest acts by solicitors. This amendment was supported by the DTI and MEPs and became part of the Directive (article 14(7)).

As the Society has commented previously in evidence to the Committee on the transposition of EU Directives, the scope of the Services Directive is extremely wide, covering diverse areas of service provision, in a Scottish setting both reserved and devolved. Its terms also require a comprehensive assessment of all the legislation, – both primary and secondary – rules and practices falling within the Directive’s ambit to ensure that they comply with its terms and for action to be taken if this is not the case. That this review in fact affects both cross-border provision of services and provision of services in an entirely “domestic” context makes it all the more complex and far-reaching. The Society considers that the twin factors of the breadth of service areas affected by the Directive and the extensive effect of the Directive’s provisions combine to make it an extremely important piece of legislation. We will examine these issues in turn.

Service provision covered by the Directive

The Society has considered the Directive from the point of view of its effect on the rules governing Scottish solicitors. However, it is clear that the Directive will potentially cover a large number of other areas of service provision. The Directive itself states that it “benefits a wide variety of services” (Recital 7) and at article 2 states that “This Directive shall apply to services supplied by providers established in a Member State”. Although the same article then goes on to list exceptions to that general principle (including financial services, transport, health care, gambling, temporary work agencies and taxation), the general rule is that service provision within the EU will fall under the provisions of the Directive. There is a wide definition of “service” covering “any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty”3. Article 50 of the Treaty itself further indicates that what are “services” are normally provided for remuneration and

3 Article 4(1)
are not governed by the provisions relating to freedom of movement for goods, capital and persons.

The European Commission, in its Handbook on implementation of the Services Directive also states its view that “The implementation of the Services Directive constitutes a significant challenge for Member States and requires prompt and serious efforts. Considering its large scope and the wide range of issues it addresses, the novelty of the approach and the numerous measures to be put in place, it is clear that close cooperation and partnership between the Commission and the Member States will be particularly important in this case”\(^4\). BERR, in its consultation on the implementation of the Directive\(^5\) used such diverse examples of services covered by its terms as hallmarking, architectural services, debt collection services, management consultancies and tourism.

It is thus clear that a potentially large number of services, and therefore service providers, will fall under the Directive and will be required to abide by its rules. Where there is a competent authority\(^6\) – that is, a supervisory or regulatory body – for that service that authority will also be required to assess its rules across a wide range of issues to ensure compliance. These competent authorities can be professional bodies, local authorities, government or government agencies, or other bodies. It should also be noted that the Directive will apply equally to areas in which service providers are already subject to regulation and rules governing the use of professional titles and access to service activities – such as legal services – and those areas which are not currently regulated or have not a particular competent authority.

**Rules requiring consideration**

As stated above, the legislation, rules and practices which will at the very least require consideration are considerable. Amongst the areas on which the Directive legislates are

- what are the permitted conditions for access to a service activity
- exclusively electronic systems for applications for licences/permissions to provide services
- quality of service provided
- information for consumers and complaints-handling systems
- insurance covering the service provided
- rules on multi-disciplinary activities
- the relationship with the Point of Single Contact
- fixed tariffs
- rules on commercial communications

\(^4\) Handbook on implementation of the Services Directive, page 7

\(^5\) Implementing the Services Directive: Consultation document on implementing the Services Directive in the UK (November 2007)

\(^6\) “Competent authority” is defined in article 4 of the document as “any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof”
• co-operation by competent authorities with equivalent bodies in other Member States

For all of the above reasons, the Society believes that the Directive requires significant and detailed consideration by the Scottish government across a range of departments.

SPECIFIC COMMENTS

What are the key issues for Scottish stakeholders during the transposition process?

The Society considers that the most fundamental issues for Scottish stakeholders in the transposition process are

• proper understanding by government – and particularly the Scottish government in respect of devolved issues – of the Directive and its effects in the different areas in which it covers
• informed and timely engagement between government and those affected by the Directive, either as service providers, competent authorities or groups representing consumers in the process of transposition, at both a UK and a Scottish level.

Although the deadline for transposition is December 2009, the implementing legislation, in whatever form it emerges, will require further possibly extensive consultation in what may be a complex and time-consuming process. Legislation also needs to be in place in sufficient time to allow proper consideration by competent authorities and service providers of the potential changes in rules and practice which will be required in each area covered by the Directive. The Society understands that such legislation may be published towards the end of 2008 or early in 2009.

Proper engagement by the Scottish government with stakeholders in the “screening” of current legislation and administrative practices and detailed examination of the effect of the Directive within the Scottish government’s area of competence is an extremely important issue. It appears to the Society that may be currently a fairly low level of awareness of the effects of the Directive amongst competent authorities and service providers in Scotland and it is not clear that any extensive work has been done in preparation for consideration of the Directive’s effects. Given the time constraints and the potential effects of the Directive, the Society considers that it is essential that further awareness-raising and detailed sector-by-sector work is carried out in a co-ordinated way at a governmental level in short course.

Should the Services Directive be implemented on a UK-wide basis or should devolved aspects be implemented by the Scottish government? What are the advantages and disadvantages of each approach?

The Directive should be transposed at an appropriate level. Given the breadth of its scope, covering very wide areas of service provision (in a Scottish context, both devolved and reserved) and encompassing both very
general issues and very specific obligations, it seems likely that a differentiated approach will, and should, be taken to different aspects of the Directive. It is clear that a number of issues will require UK-wide implementation, however an all-UK approach to aspects of implementation, although attractive in some respects, must be considered on a case-by-base basis to ensure that it is always appropriate.

In particular, the different legal and regulatory structures in Scotland in many areas may require differential implementation, and it is also reasonable to assume that separate discussions will be required with affected organisations in Scotland to ensure that all appropriate issues are covered. In addition, where the Directive does cover an area of devolved competence, it may be that the Scottish government will wish to take a different approach to that adopted by the rest of the UK on some issues.

The Society would therefore not advocate the adoption of one UK instrument covering all aspects of implementation and considers, in particular, that the devolved area of legal services should be dealt with in Scotland. In the past, other Directives which are of UK application affecting the regulation of solicitors and advocates in Scotland have been implemented by specific Scottish legislation through the Scottish Parliament (for example, the implementation of the EU Lawyers’ Establishment Directive 98/57). This is particularly important given the necessity for the implementation of the Directive to tie in with other changes in the regulation of the legal profession being dealt with in Scotland, such as the implementation of the Legal Profession and Legal Aid (Scotland) Act 2007 and proposals on alternative business structures and the legal profession. These issues are inextricably interlinked and cannot be dealt with in isolation. In addition, the Scottish government has specific expertise in this area of law and Scottish parliamentarians are best placed to examine any implementing legislation.

Should there be a Point of Single Contact in Scotland?

The Society has supported BERR’s view that, given the Directive covers a wide area of service provision, both reserved and devolved, and that users from outwith the UK are unlikely to understand the operation of the Scotland Act 1998, a single UK Point of Single Contact (PSC) is the simplest model. In that case, the important question is how the PSC will operate in practice and ensuring that the information on the PSC be accurate and easy to locate, and the proper links to competent authorities established.

The Society also considers that there may be advantages in being included in clear and correct information at a UK-level PSC covering Scottish legal services. This may draw in potential service providers or potential recipients of services who may not initially have thought of Scotland and may not have consulted a specifically Scottish PSC.

Should there be national liaison points to cover Scotland?

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1 The European Communities (Lawyer’s Practice) (Scotland) Regulations (SSI 2000/121)
The issue of national liaison points under article 28 is separate from, but raises some of the same issues as that of the Point of Single Contact.

The purpose of a national liaison point is to facilitate requests for mutual assistance, particularly where competent authorities are not able to identify the appropriate competent authority to contact in another Member State. Just as with the PSC, one of the difficulties which a Scottish national liaison point would have is that some of the issues it would deal with are properly Scottish in character and relate to specifically Scottish issues whereas others would relate to UK-wide competent authorities. A specifically Scottish national liaison point would have to deal with this particular issue. There is also a potentially large burden of administration falling on whichever body undertakes this task. Again, the important issues are the accuracy and accessibility of the information.

In its response to the BERR consultation on the implementation of the Directive, the Society did not put forward a particular view on the question of whether there should be a Scottish national liaison point, but made the following points:

- a national liaison point must be able to accurately identify the correct competent authority
- in legal services, it is not always easy to identify the correct competent authority where lawyers (in other Member States) may be organised and registered by region rather than nationally;
- also as regards legal services, the UK poses particular potential problems for those entering the system as it comprises different types of practitioner as well as different jurisdictions.

**What discussions have stakeholders had or plan to have with the Scottish government on how the Directive should be implemented; in particular, whether it should be implemented on a UK-wide basis**

The Society hopes to work closely with the Scottish government (Constitution, Law And Courts Directorate) on the implementation of the Directive. Discussions should particularly focus on issues which are specific to the Scottish legal profession, such as the screening of current legislation and practices. However, questions of the general approach of government to implementation will also have an impact in Scotland and should be discussed.

The Society, along with the Faculty of Advocates, has already met with officials from the then Civil and International Justice Directorate in September 2007 for an initial discussion on how justice issues should be dealt with, and attended a subsequent meeting with Scottish civil servants and BERR in April. The Society has also attended meetings with BERR in 2006 and 2007 to discuss the implementation of the Directive. We expect that future meetings with the Scottish government will take place in the near future and with BERR later in the year.
Any comments on the Scottish government’s responses to the Convener’s letter?

The Society has some concerns about the lack of progress made in regard to ascertaining the volume of legislation which will be covered by the Directive and the specific nature of that legislation. The Directive has been under discussion since 2004 and during that time it can be assumed that the Scottish Executive and Scottish government would have been involved with negotiations on the UK position on the text and the consideration of specific Scottish issues in liaison with relevant stakeholders. This should have required knowledge of the probable effect of the Directive on different areas of legislation and practice falling within the Scottish government’s competence and would appear to be a necessary pre-requisite of the work which will have to take place straightaway to screen legislation and practices against the standards set out in the Directive.

Although it is appropriate that BERR should be involved in the presentations to competent authorities, it has to be recognised that the detailed consideration of devolved issues is the domain of Scottish government. Even if it is eventually decided that implementation of devolved aspects will be dealt with in Westminster, full consideration of those issues falling into the Scottish government’s competence will still need to take place in Scotland.

CONCLUSION

In conclusion, the Society considers that the EU Services Directive is a piece of complex, far-reaching legislation with potentially important effects for consumers, service-providers and those who regulate such providers. The effect of the Directive will not only be on cross-border practices but will equally affect purely domestic arrangements. All levels of government with responsibilities for areas falling under the Directive will need to be fully involved in the implementation process and this is particularly important in a Scottish context. Where it has not already been done, the Scottish government, in the Society’s view, needs to take swift action to ensure that there is proper comprehension of the Directive by those who need to be involved in the implementation process and an appropriate and timely course of action set out for screening of legislation and practices in areas of devolved competence.

WRITTEN SUBMISSION FROM THE FACULTY OF ADVOCATES

(The following submission is the Faculty of Advocates’ response to the department for Business Enterprise & Regulatory Reform consultation document on implementing the EU Services Directive in the UK.)

The November 2007 Consultation Document on Implementing the EU Services Directive (the ‘Directive’) in the UK, issued by the Department for Business Enterprise & Regulatory Reform (‘BERR’), poses a series of questions relating to the implementation of the Directive. The Faculty of
Advocates (the ‘Faculty’) provides its comments only in relation to the issues on which it considers it could or should appropriately comment. The Faculty’s comments are as follows (references to paragraphs and question numbers follow the numbering in the Consultation Document):

**Paras 31 and 32: Devolution**

If it were to be considered appropriate to make any changes to the way the provision of advocacy services currently operates in Scotland (as will be seen from our comments below, the Faculty does not consider that any changes are needed), the following provisions should be borne in mind:

- Section 30 and Schedule 5 of the Scotland Act 1998 – which provide that the regulation of the legal profession in Scotland is devolved and is therefore the responsibility of the Scottish Executive.

- Article XIX of the Act of Union 1707 – which provides certain protections for the courts of Scotland and the authority and privilege of the College of Justice (the Faculty is a part of the College of Justice, with advocates being officers of the Court of Session and ultimately regulated by it.) The Court of Session is also a part of the College of Justice.

**Q2**

Other potential users would be academic and research institutions with an interest in the area and providing independent monitoring of the way the Directive is implemented. The only additional requirement they may have in relation to the portal that we can envisage is the ability to see the number of visitors to the site or the number of users of particular services/information provided on the portal.

**Q6**

It would be useful to signpost certain information, such as taxation and labour law, if the PSC is to approach the true status of a ‘single’ point of contact/information.

**Q7**

The most important pieces of information necessary for service providers to do business in the UK, in our view, would be:

1. Permitted operational modes of doing business (i.e. sole trader, partnership, company, branch);
2. How to go about setting up in business in one’s preferred mode of operation;
3. Regulatory/licensing requirements for various activities;
4. Estimates of time and costs to take the necessary steps to set up a particular type of business;
5. Access points for selecting professional advisers to assist with various aspects of operating in the UK.

**Q11**

Yes
Q16
There should be one PSC for the UK.

The Faculty does not consider that it would be necessary or appropriate that there should be a separate point of contact to cover Scotland. The Faculty is of the view that the spirit of the Directive would be best implemented if service providers and service users were able to use one portal to cover the whole of the UK, with each information section on the portal being carefully drafted to reflect any variations in requirements applicable to Scotland (or Wales or Northern Ireland).

It would not, however, be appropriate to have information on the portal covering England, with a caveat along the lines that ‘separate/additional arrangements may apply in Scotland (or Wales or Northern Ireland)’. That would be, in our view, a serious disincentive to providers and users considering providing services or operating in Scotland.

Q30
Yes, due to its separate legal system and devolved status, that would be in our view the only feasible approach to complying with the duties imposed.

Q41
In legal proceedings, one party's attachment of the other party's assets (for example, by "arrestment on the dependence") may be released on condition that that a guarantee ("caution") is provided instead.

Q46
The Faculty’s current rules will require modification in order to meet the Directive’s requirements. The Faculty currently obtains professional indemnity insurance for its members on a block basis. Considering the relatively small size of the advocates’ branch of the legal profession, it is considered that this arrangement provides both the necessary cover for all the members and the best value in the circumstances.

This way of providing professional indemnity cover was considered by the competition authorities in two instances. In its investigation of the Law Society of Scotland’s Master Policy arrangements (which are for these purposes very similar to the Faculty’s arrangements) the Office of Fair Trading (‘OFT’) concluded that no restriction on competition arose from the arrangements, and it therefore closed its investigation into the issue on 11 February 2005. The OFT also took part in the preparation of the Report by the Research Working Group on the Legal Services Market in Scotland (published in 2006). That report repeated the OFT’s earlier findings and also advised the Faculty to review its own indemnity arrangements taking into account the OFT’s comments on the Law Society’s ones (such as the comments that the Law Society arrangements took into account the impact of good claims records on premiums, the fact which facilitated the finding of no restriction on competition).
Once the Directive is implemented in the UK the Faculty will be obliged in terms of the Directive to accept a service provider’s equivalent or comparable insurance obtained in another Member State. From that, two questions will arise for the Faculty:

- Whether in each case the alternative insurance cover is ‘equivalent or comparable’ to the one procured by the Faculty; and
- Overall, whether it would still be appropriate (or feasible) for the Faculty to continue to obtain indemnity insurance for its members on a block basis.

Q48

The Faculty does not operate a ban on commercial communications by its members but it does have professional rules applying thereto. Those rules relate to the independence, integrity and dignity of the advocates’ profession.

Q49

There are currently no statutory restrictions on advocates (or solicitors) in Scotland practicing in MDPs. However, both the Faculty and the Law Society of Scotland have their professional rules on the issue, as follows:

- The Faculty has a rule against an advocate entering into partnership with another person in connection with his practice as an advocate;
- The Law Society of Scotland has a rule against a solicitor forming a legal relationship with a person who was not a solicitor, with a view to their jointly offering professional services as an MDP.  

The Faculty’s position is that the current restrictions on multidisciplinary practices involving advocates (and solicitors) in Scotland should remain, as the Faculty has serious concerns in relation to the implications of permitting legal practices to be (part) owned by non-lawyers. Those restrictions, while not of a statutory nature, are in conflict with the Directive and should be, in the Faculty’s submission, specifically provided for as being justifiable under Article 25(a) of the Directive.

The Faculty interprets the provisions of Article 25(1) as applying in Scotland at the level of generality that encompasses the whole of the legal profession in Scotland (i.e. both advocates and solicitors, as two branches of the same profession). Therefore, strictly speaking, the Article does not raise any issues of the so-called ‘legal disciplinary practices’ (‘LDPs’), whereby due to the above mentioned rules, advocates and solicitors also cannot be in practice or partnership together. A service provider from another Member State who wished to provide advocacy services in Scotland in the context of a partnership structure could become (or, more accurately, seek recognition as) a solicitor advocate, and be regulated by

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8 This rule only prohibits a legal relationship; parallel partnerships were in existence at one point between firms of solicitors and providers of professional services set up by the accounting firms Arthur Andersen and KPMG. Those parallel partnerships did not remain in existence for very long.
the Law Society of Scotland. A service provider who wished to provide
advocacy services as a sole practitioner could do that as an advocate, and
be regulated by the Faculty of Advocates.

In terms of Article 25, bans on multidisciplinary activities on providers from
the regulated professions are justifiable if they exist in order to ensure the
providers' independence and impartiality and to guarantee compliance
with rules governing professional ethics and conduct.

The Faculty appreciates that the purpose behind the current Consultation
Document is to seek views not on the Directive itself, but on the proposed
ways of its implementation in the UK. It is already inherent in the drafting of
Article 25 that the accepted view of the Directive is that MDPs are
beneficial, subject to limited exceptions. Nevertheless, it is necessary, in
our view, when considering whether or not those limited exceptions do
apply to any particular regulated profession, to bear in mind some general
considerations flowing from the discussions surrounding the question of
whether MDPs as such should be promoted in any particular profession.

The essence, in our submission, of those general considerations is the
question of whose interests should be considered when looking at the
question of MDPs. There seem to be at least three sets of interests that it
would be appropriate to consider in this context, at least when it comes to
the legal profession, namely:

1. Service users/clients;
2. Advocates, solicitors and third parties who wish to practice
together in an MDP; and
3. Public interest in the proper administration of justice.

In a number of recent reports which have looked into the question of
MDPs in legal practice (for example, the Clementi Report and the above
mentioned report of the Working Group for Research into the legal
Services Markets in Scotland) there has been a recognition that an
appropriate regulatory model is still to be identified for such practices.
Some of the issues of concern that can be identified are:

a. **Conflicts of interest**

For example, it may be in the interests of a multi-disciplinary practice
as a whole to continue acting for a large property development client
(and therefore continue providing surveying, accounting or planning
application services) but the practice may already be acting for a
different client in litigation proceedings in which the property
development client was suddenly named as an additional defender.
Pressure may be exerted on the litigation team to either (i) withdraw
from acting for the other client, even if that would cause serious
costs, inconvenience or lack of continuity in representation for that
other client (in addition to the fact that the litigation team would
remain aware of the potential weak points and confidential
information relating to that client); or (ii) try to set up ‘Chinese walls’
and keep both sets of instructions in the practice, even if such a
Chinese wall would be against the lawyers’ rules of professional conduct.

b. Independence
Similarly, lawyers’ professional decision making can be seriously compromised by the commercial pressures of the rest of the practice. Other commercial considerations may suggest that business from certain clients is not sufficiently remunerative, taking too much of the fee-earners’ time at rates that are lower than what the practice could charge other clients, and the practice should withdraw from acting for those clients and that without regard to the clients’ best interests or the best stage at which such a withdrawal should be implemented.

c. Impartiality
Again, lawyers’ ability to provide an independent view, for example on the prospects of success of an action (and the ability to obtain a ‘second opinion’ from counsel who would be free from all partnership links, whether LDP or MDP) is in danger of being affected by business pressures from other partners in the practice, who may be reluctant to give ‘bad news’ to the client.

d. Rules relating to privilege and confidentiality
This aspect is particularly important and sensitive. In the operation of a modern legal practice in all but the smallest firms, computer systems generally allow for a very large amount of information about the clients and their business and legal affairs to be accessible to anyone with rights of access to the system. Often, all letters and documents on clients’ files could also be seen as electronic files. Providing for protection of such confidential information from being seen by those who should not have access to it, is immensely important. In terms of currently available technology, it is not clear that such protection could be provided at the moment.

Further, legal privilege only attaches to certain types of communications- those between clients and their legal advisers (and that in certain circumstances). The operation of a single multi-disciplinary practice, involving non-lawyers, may undermine unjustifiably clients’ future ability to claim privilege in any court proceedings.

In Scotland, with a smaller number of solicitors and advocates than in England, and with its geographical dispersal of population, there is also the additional concern of the introduction of MDPs having a potentially adverse impact on the economics of high street legal practice. Such an adverse impact could ultimately have implications for access to justice throughout Scotland.

The concerns that we have noted above are sometimes brushed aside on the basis that one should try a new system and if there are problems, they
might be mended by the introduction of adequate safeguards or the intervention of, for instance, competition authorities (see, for example, the Scottish Consumer Council’s response to the OFT on the ‘Which?’ super-complaint, dated July 2007). As yet, nobody has been able to devise a set of safeguards that would give comfort in advance both to the suppliers and to the users of the legal services that abuses would not take place. More importantly, what such an approach neglects is the extreme difficulty (if not impossibility) of micro-managing, through rules of professional conduct, the range of everyday situations in which a lawyer could find him/herself; having to deal with pressures which consciously or sub-consciously will be affecting that lawyer’s attitude to risk, conflict of interest, prospects of success in litigation, judgement as to the most suitable person to be nominated as the insolvency practitioner or the expert accountant.

The question is therefore not simply choice but the quality of the choice that service users would be able to obtain. While in some areas of human endeavour widening the choice may be all that matters, in relation to regulated professions (as Article 25 recognises) there are other important considerations.

The Faculty’s and the Law Society of Scotland’s current rules on MDPs take full account of the special position of the Scottish market for legal services, the country’s geography, the lack of adequate safeguards which would otherwise protect independence and impartiality of the providers if MDPs were introduced, the difference between services which can be commoditised (such as certain aspects of property conveyancing) and the great number of legal services which are by their very nature tailor-made and require exercise of professional judgement and discretion on a daily basis.

The Faculty therefore submits that its rules, to the extent that they restrict operation of multidisciplinary practices contrary to Article 25 of the Directive, should be specifically identified as justifiable in accordance with that Article.

Q54

Please see our response to Q49.

UK Government Consultation questions (relevant to the Faculty of Advocates response)

Key Questions

Key Question 1: Do you believe that the Government’s proposals for implementing the Directive’s requirements for the PSC, as set out in Chapter A, will meet the needs of users and offer appropriate value-for-money for taxpayers?

Key Question 2: Do you agree with the Government’s proposals in Chapter B for ensuring that authorities with a regulatory or supervisory role cooperate effectively with their counterparts in other Member States?
Key Question 3: Do you agree with the Government’s proposals for implementing the quality of services provisions in Chapter C? How can these provisions be implemented so that service recipients have greater trust in the services provided from other Member States whilst minimising regulatory burdens on service providers?

Key Question 4: Can you think of any examples of legislation, administrative practices or licensing regimes either in the UK or in other Member States that should be amended in order to comply with the Directive (see pages 73-74 for examples)?

General Question: Do you have any comments in general on implementation of the Services Directive in the UK?

Chapter A: Points of Single Contact (pages 23-35)

Q1 What facilities will the following users need in order to interact effectively with the PSC:
   a) Service Providers?
   b) Service Recipients?
   c) Competent Authorities?

Q2 Are there any other potential users of the PSC?

Q3 “The PSC must be easily navigable and clearly laid out to provide an agreeable user experience. It should be clear on what can be achieved via the portal and direct users quickly”. How best do you think the PSC could achieve this aim?

Q4 Do you agree with the Government’s proposed approach to the role of the PSC?

Q5 Do you agree with the recommendation that the Business Link functionality should be at the heart of the PSC? If not, what alternative do you prefer and why?

Q6 Do you agree that, regardless of the scope of the Directive, the UK PSC should attempt to signpost useful information, for example taxation and labour law?

Q7 Which are the most important pieces of information necessary for service providers to do business in the UK, specifying up to five?

Q8 Which sectors of the services industry do you think are best placed to benefit quickly from the opportunity to access the market provided by the UK PSC?

Q9 Which sectors of the UK services industry do you think are best placed to benefit quickly from the opportunity to access other EU markets provided by the Directive?

Q10 Do you think that the PSC should be made available in additional EU language(s)? If so which one(s) and to what extent?

Q11 Do you think that dedicated email and/or telephone support is necessary for the PSC from day one?

Q12 What sort of queries do you think users will need support with?

Q13 As a user would you be prepared to pay for telephone support for the PSC - e.g. through a chargeable rate call line?

Q14 Do you agree that access to the PSC should be free? If not how much would you as a user be willing to pay to use the PSC service?
Q15 Do you agree that any additional advice and services could be charged for independently, if necessary? Do you have views as to what types and level of charge would be appropriate?

Q16 Do you think there should be one PSC for the UK or should it be divided up? If divided, what should the basis of that division be?

Q17 Do you agree that the Government should be responsible for funding the PSC? If not, who should provide it and on what terms?

Q18 Do you agree with the proposed approach for ensuring that the PSC remains up to date and accurate? How do you think the obligations on those contributing content can be best enforced?

Q19 Do you agree that the Government should await the review of existing website liability arrangements rather than drawing up a specific policy for the Services Directive?

Q20 Do you agree that an EU PSC brand alongside a national identifier would be beneficial to users of Points of Single Contact?

Chapter B: Administrative Cooperation (pages 36-47)

Q21 How great a net increase in workload might you expect competent authorities to face as a result of the administrative cooperation provisions of the Directive?

Q22 Are there any additional competent authorities who regulate areas of service provision within the scope of the Directive but which are not listed in Annex D?

Q23 Are you aware of any competent authorities whose statutory regime would need to change to comply with Article 30(2)?

Q24 Do you have any comments on the implementation of Article 30(2)?

Q25 Are you aware of any competent authorities whose statutory regimes would need to change to be able to comply with the obligations to provide mutual assistance?

Q26 Do you have any comments on the method of implementation of the mutual assistance obligations?

Q27 Are you aware of any registers containing information on service providers and which UK competent authorities can consult, for which the access rights would need to be changed in order to comply with the Directive?

Q28 Do you have any further comments on the obligations to give competent authorities in other EU Member States access to consult registers in which providers have been entered, on the same basis as their equivalent UK competent authority?

Q29 A national liaison point needs to be established to comply with the Directive. Do you have any comments about the proposal to establish one such national liaison point in the Department for Business, Enterprise and Regulatory Reform?

Q30 Do you have any comments as to whether national liaison points should also be established within Scotland, Wales and/or Northern Ireland?

Q31 Do you agree that option 3 should be the option adopted for the way competent authorities are registered with IMI? If so, why? If not, which option would you favour and why?

Q32 Do you have any comments on the proposed approach to IMI coordinators?
Q33 Do you have any comments on the proposed approach to training for use of IMI?

Chapter C: Ensuring the Quality of Services (pages 48-62)

Q34 Do you have any comments on what basic information should be available on the ‘consumer portal’?

Q35 Which of the options listed do you think is best placed to deliver the consumer portal required under Article 21? Is there an alternative not identified that you prefer?

Q36 Do you have any comments on the use of mutual assistance procedures to obtain information for service recipients?

Q37 In your area of expertise, are you aware of any legal or administrative requirements to make information available to service recipients?

Q38 Do you agree that the legislative approach outlined in relation to the information and redress requirements is sensible? If not, what alternatives can you propose?

Q39 Do you have a view on how we should define “in the shortest possible time”? What factors or constraints might be relevant in determining the time needed to respond to complaints?

Q40 What approach do you think should be taken to enforcement of the information and redress provisions?

Q41 Are you aware of any instances where a financial guarantee is required for compliance with a judicial decision in the UK?

Q42 Do you agree with the proposed approach of encouraging providers to take action on the provisions in Articles 26 and 37? What would be effective ways for encouraging providers to take action? What current initiatives are you aware of in this regard?

Q43 Which of the three options for providing information on labels and quality marks is preferable? What alternatives are there?

Q44 To what extent is information on labels and quality marks already available? How could this be improved?

Q45 Do you agree that professional liability insurance should not be a general mandatory requirement in law for ‘high-risk’ service provision in the UK? What are your reasons?

Q46 If you work in a profession where professional indemnity insurance is a requirement to practice, or if you oversee such rules, we would be interested to hear your views on whether changes are required to your professional rules for them to meet the Directive’s requirements.

Q47 Do you have any comments on the application of Article 22(1)(k)?

Q48 What professional rules relating to commercial communications by the regulated professions already exist? How should we ensure that all professional rules comply with the Directive?

Q49 We invite views on how best to ensure the provisions on multidisciplinary activities are workable, particularly from respondents in those areas falling under the two affected groupings. Are you aware of any restrictions on multidisciplinary activities in the UK?

Q50 Do you agree with the suggested approach to the obligation on providers concerning their general conditions of service?
Q51 Can you suggest examples of ‘objective criteria’ that might justify the use of different terms for different service recipients in a provider’s general conditions of access?

**Chapter D: Screening the UK’s Rules on Service Provision (pages 63-74)**

Q52 Do you agree that, as a general rule, it is better to regulate in an identical way for both temporary and established (i.e. UK-based) service providers?

Q53 Do you agree that the information contained in implementation reports to the Commission should be made publicly available?

**Annex A: Summary Findings of Screening Exercise (pages 76-92)**

Q54 Are you aware of any rules, whether in law or elsewhere, which govern the legal services and may conflict with the Directive?

Q55 Do you agree that there are strong public policy grounds for retaining the UK’s existing system of alcohol licensing, including for sales by temporary providers?

Q56 Do you agree that requirements in the Insolvency Act for the authorisation of all practitioners from another Member State should be relaxed? Do you have suggestions on what other arrangements might be appropriate?

Q57 Do you agree that the proposed changes to hallmarking regulation meet our obligations under the Directive?

Q58 Do you have any other suggestions or comments relating to the proposed changes to hallmarking regulation, for example regarding enforcement and the safeguarding of UK consumers?

Q59 The Hallmarking Act currently prevents UK assay office marks being applied outside the UK. Do you believe, in principle, that UK assay offices should be able to apply their UK assay office marks outside the UK?
At its meeting on 11 December 2007 the European and External Relations Committee considered information on the EU Services Directive\(^9\) and its implications for Scottish stakeholders. In particular, the Committee noted that this is a far reaching directive the aim of which is to develop a single market in the service sector by breaking down barriers to cross-border trade within the EU and that the Directive must be implemented into domestic law by 28 December 2009.

Given the reach of the Directive, the Committee understands that its implementation will have a potentially significant impact in devolved areas of competence and that a significant part of this process will be to decide whether the Directive is implemented entirely by Westminster or whether those parts which are devolved are legislated on in Scotland.

The Committee is aware that the UK Government recently launched a consultation on its proposals for implementing the Services Directive in the UK\(^10\) and seeks input from stakeholders on issues such as establishing Points of Single Contact (PSC), separate national liaison points and the screening process to ensure that all legislation and administrative regimes are compliant with the requirements of the Directive. The Consultation document indicates that the UK Government is in discussion with the Scottish Government in developing policy for implementation.

The Committee agreed that, in the first instance, it would be helpful to seek clarification from the Scottish Government on its position in respect of the transposition of the Services Directive, its discussions with the UK Government and Scottish stakeholders to date and its own plans for transposition in respect of the devolved matters. In particular, the Committee agreed that it would be helpful to seek the following information:

- Details of the Scottish Government’s position on the Services Directive;
- The reasons why the Services Directive has no longer been identified as one of the Scottish Government’s EU priorities;
- Details of the Scottish Government’s position on the implementation of the Services Directive, in particular:
  - Whether the Directive should be implemented on a UK-wide basis or should devolved aspects be implemented by the Scottish Government;
  - Whether there should be a Point of Single Contact in Scotland;
  - Whether there should be national liaison points to cover Scotland;

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• Details of the screening exercise the Scottish Government has undertaken to ensure that devolved legislation and practices are compliant;
• Whether details of the screening exercise have been published on the Scottish Government’s website;
• Whether the Scottish Government supports the reporting process on the screening exercise (para D31 of the UK Government’s consultation);
• Details of the discussions the Scottish Government has had to date with Scottish stakeholders on how the Directive should be implemented; in particular, whether it should be implemented on a UK-wide basis;
• Details of the discussions the Scottish Government has had with other devolved administrations on the implementation of the Services Directive;
• The next steps the Scottish Government plans to take in respect of implementation.

We look forward to hearing from you in respect of each of the points raised.

CORRESPONDENCE FROM THE MINISTER FOR EUROPE, EXTERNAL AFFAIRS AND CULTURE TO THE CONVENER DATED 28 JANUARY 2008

Thank you for your letter of 17 December 2007 seeking information from the Scottish Government on a number of points relating to the transposition of the EU Services Directive.

Our position in respect of the transposition of the Directive, our discussions with the UK Government and Scottish stakeholders as well as our plans for transposition in respect of devolved matters is outlined in the following responses to each of the bullet points set out in your letter.

Details of the Scottish Government’s position on the Services Directive:

The Cabinet Secretary for Finance and Sustainable Growth wrote in October 2007 to the Secretary of State for Business, Enterprise and Regulatory Reform (BERR) in response to correspondence sent to FM seeking approval to proceed to consultation on the implementation of the EU Services Directive in the UK. He put forward the view that setting up a separate Point of Single Contact and National Liaison Point in Scotland would require some duplication of resources and effort and possibly lead to unnecessary confusion and complication and also be unlikely to yield any additional benefits. He further indicated the Scottish Government was content for the consultation to proceed on the terms outlined in the SoS’s communication to the UK Cabinet Committees on the understanding that, because we have not yet reached a firm commitment or formal agreement on how implementation will be delivered in relation to devolved functions, BERR will continue to work closely with the SG across the whole scope of implementation, throughout and following the consultation.
Reasons why the Services Directive has no longer been identified as one of the Scottish Government’s EU priorities;

It was a priority during 2006 whilst the terms of the proposed Directive were still being negotiated, discussed and finalised. The work now is about the implementation and transposition process which must be carried out to the specific timescale detailed in the final Directive, as is the case for any other transposition. We will of course continue to drive forward the work on this and monitor the implementation process to ensure timely and effective completion.

Details of the Scottish Government’s position on the implementation of the Services Directive, in particular:

Whether the Directive should be implemented on a UK-wide basis or should devolved aspects be implemented by the Scottish Government;

The consultation document issued by BERR seeks views on how the Directive can best be implemented throughout the UK. Although responsibility for certain legislation within the scope of the Directive is devolved there is as yet no formal agreement on how implementation will be delivered in relation to any devolved functions. A view will be taken once we have a clearer indication of the volume of legislation that is affected and requiring change and once policy officials have had discussions with and taken advice from legal colleagues on how best to proceed. An initial meeting between policy officials and legal is scheduled for 22 January.

Whether there should be a Point of Single Contact in Scotland;

Each of the Scottish Directorates was consulted on the draft version of the BERR consultation document and no policy areas intimated that there should be a Point of Single Contact in Scotland. The view taken was that it would result in duplication of resources and effort and possibly lead to confusion and complication and yield no additional benefits. A great deal of the material required for the PSC is already in existence on the Business Link website and Scottish Enterprise and HIE have decided to become part of the UK government’s businesslink portal. As mentioned above the Cabinet Secretary for Finance and Sustainable Growth wrote in such terms to SoS for BERR.

Whether there should be national liaison points to cover Scotland;

See point made above in respect of PSC – same applies for national liaison points.

Details of the screening exercise the Scottish Government has undertaken to ensure that devolved legislation and practices are compliant.

We used the indicative lists prepared by BERR as a starting point. Officials have been asked to check the primary legislation listed, ensure that any secondary legislation arising from it is being checked and also to consider any
other legislation in their area of responsibility which might contain reference to the provision of services. Likewise in respect of licences and administrative practices. This exercise is ongoing.

**Whether details of the screening exercise have been published on the Scottish Government's website;**

Nothing has yet been posted but if the ongoing scrutiny of our legislation and practices identifies any requirements that conflict with the Directive, details will be published on the SG website and also be added to existing material on the BERR website.

**Whether the Scottish Government supports the reporting process on the screening exercise (para D31 of the UK Government's consultation);**

There is a requirement under Article 39 of the Directive for Member States to present a report to the Commission containing certain specified information. The Commission in turn shall forward the reports to the Member States for their observations on each of the reports within a specified time frame. Within that same time frame the Commission shall consult interested parties on those reports. The position in Scotland will be included as an integral part of the UK report.

**Details of the discussions the Scottish Government has had to date with Scottish stakeholders on how the Directive should be implemented; in particular, whether it should be implemented on a UK-wide basis;**

No such discussions have taken place but the consultation document was issued to all Local Authorities (Chief Executives as well as Licensing Officers); CoSLA; Trade Bodies; various Competent Authorities; and individual companies. SG officials plan to arrange a presentation from BERR to CoSLA and other Competent Authorities in due course.

**Details of the discussions the Scottish Government has had with other devolved administrations on the implementation of the Services Directive;**

No formal discussion has taken place although email exchanges between officials did take place, which established that each of the devolved administrations was in favour of there being only a UK PSC and NLP.

**The next steps the Scottish Government plans to take in respect of implementation.**

Our immediate priority is to complete the screening process of legislation, licences and administrative practices to identify any requirements which conflict with the Directive. We will then decide the most appropriate route for implementing any legislative changes that may be required.
Most importantly, however, beyond the necessary bureaucracy involved in its implementation, we will be considering how best we can help to mainstream the awareness of new commercial opportunities that the Directive was designed to open up, throughout the areas of Scotland’s services market that the Directive covers.
Introduction

1. At its meeting on 18 March 2008 the Committee agreed to include the Brussels Bulletin on the Committee’s agenda. The latest Brussels Bulletin – Issue 13 May is attached at Annexe A.

Purpose of the Brussels Bulletin

2. As Members will be aware, the Brussels Bulletin is produced by the Parliament’s European Officer and is based on the key themes identified by the Committee as a result of its consultation on the Commission’s Legislative and Work Programme for 2008. At its meeting on 19 February 2008, the Committee agreed that the European Officer should focus on four key themes over the coming year:

   - Energy and Climate Change
   - Maritime Issues (including Fisheries)
   - Structural/Reform Issues
   - Economic and Social Issues

3. The European Officer provides early intelligence on expected developments, actions of the key players and detail of debate on these key themes, primarily through the Brussels Bulletin. This is circulated to the subject committees and published on the website. More detailed briefing can also be commissioned by a committee on any specific issue.

Recommendation

4. The Committee is invited to note the latest issue of the Brussels Bulletin.

Committee Clerk
May 2008
ENEWSS IN BRIEF

Energy issues
The Commission is currently seeking to broker a compromise on electricity unbundling before the Summer Council (19 – 20 June 2008), whilst the Energy Committee of the European Parliament has voted against full unbundling for the gas sector (19 May 2008). The issue will now be debated in plenary session in June.

Details of the Parliament reports on renewables (Claude Turmes MEP) and carbon capture (Chris Davies MEP) have been published (8 May and 6 May 2008 respectively) ahead of plenary discussion in June.

CAP reform
The global food crisis was discussed at the Agriculture Council (19 May 2008), where certain member states made an explicit link with the upcoming CAP reform. The much trailed CAP ‘health check’ itself was published the next day (20 May 2008). The UK Government will consult on the issue in June 2008.

Maritime issues
The first EU Maritime Day took place on 20 May 2008, and was marked by a two day conference. The event was addressed by Scottish Minister Richard Lochhead MSP.

Subsidiarity
Representatives of EU National Parliaments met in Slovenia to discuss the necessary revision of parliamentary practice needed to operate the subsidiarity test (7 – 8 May 2008). On a related matter, a conference on the regional dimension of subsidiarity took place in Brussels (19 May 2008).

Scottish Parliament Justice Committee
The Justice Committee was in Brussels on a fact finding visit (13 June 2008). The Committee, together with the Law Society of Scotland, hosted a round table discussion in the European Parliament for EU officials and practitioners which was addressed by Johnathan Fauli, DG for Justice, and Lord Mance of the House of Lords Select Committee on the EU, amongst others.

Scottish MEP contribution
The second article in the on-going series of MEP contributions comes from Ian Hudghton MEP on the subject of holiday time share reform.
ENERGY UNBUNDLING
Proposal
Amendment to the Directive concerning common rules for the internal market in electricity (‘energy unbundling’)  

Current status
A compromise agreement on the way forward appears to be emerging in Member State negotiations.  

What’s happening?  
The Commission has modified the text of its proposal on energy unbundling to mollify the concerns of certain member states (particularly France and Germany, who, together with six other like minded states, hold a blocking minority).  

The revised text was discussed at the regular meeting of Member States’ Permanent Representatives to the EU (COREPER) (14 May 2008). The aim of the discussion was to provide the foundation for a ‘general approach’ to be tabled at the next Energy Council (6 June 2008).  

The original revision envisaged by the Commission would allow former state monopolies to retain ownership of their grids but compel them to abdicate all management to an independent Transmission System Operator (TSO). However, the Commission has responded to French and German fears that company’s grid assets could be devalued by poor management. 

The supervisory body would now be composed of members appointed in part by the vertically-integrated firm that owns the network. Other members would be appointed by ‘third party stakeholders’ and employee representatives. The exact balance of the appointees has yet to be resolved. The change from the earlier compromise is that the companies will have greater input into the appointments to the board. 

A new clause has also been inserted requesting the Commission to review the proposal after five years. 

The Energy (ITRE) Committee of the Parliament recently gave (narrow) support to the full unbundling proposal as originally outlined by the Commission (6 May 2008). It remains to be seen the impact the new Commission proposal will have on the Parliament’s plenary vote (16-19 June 2008).  

In a related matter the Parliament’s Energy Committee voted to reject the proposed ‘unbundling’ of gas supply (directive on internal market for natural gas) (19 May 2008). The committee supported the Franco-German alternative (the so called middle way on unbundling). The issue will be debated in plenary session (16-19 June 2008).
RENEWABLE ENERGY
Proposal
Proposal for a directive on the promotion of the use of energy from renewable sources (The ‘Renewables Directive’)

Current status
Details of the draft report by Claude Turmes MEP on renewables have been released.

What’s happening?
Claude Turmes MEP is heavily critical of the Commission’s proposed framework for renewable energy trading. To address the shortcomings in the directive Turmes intends to introduce amendments to create ‘voluntary transfer accounting certificates’ (TACs), and to improve the flexibility mechanisms available to governments. Details of the amendments are outlined in an explanatory memorandum deposited with the Energy Committee (8 May 2008).

Turmes will also recommend the elimination of the mandatory 10% biofuels target and its replacement with recommendations on ‘acceptable’ and ‘unacceptable’ uses of bio-energy. He intends to define categories for biomass/biofuel use (to be termed ‘go’ categories).

The MEP would also like to improve the sustainability criteria for biofuels and increase the Commission’s proposed target of securing 35% greenhouse gas (GHG) emission savings to around 60%.


In a related matter, EU Agriculture Commissioner Mariann Fischer Boel has published proposals to scrap the current energy crop subsidy of €45 per hectare, which some believe has led farmers to shift their production towards biofuels. The move comes as part of the proposed CAP Health Check (20 May 2008) (see below). The Parliament is also due to adopt a resolution on rising food prices during its plenary session (22 May 2008).

CARBON CAPTURE AND STORAGE
Proposal
Draft directive to establish a legal framework for the storage of CO₂ in underground geological formations

Current status
The Energy (ITRE) Committee’s rapporteur on carbon storage has issued a statement on the expected content of his report (6 May 2008).

What’s happening?
The Energy Committee’s rapporteur on carbon storage, Chris Davies MEP, held a press conference to detail the content of his report. He is to call for all existing fossil fuel power plants to be retro-fitted with CO₂ capture and storage technology by 2025. His report calls for a moratorium on the construction of all new power plants (from 2015) that are unable to eliminate 90% of their atmospheric carbon emissions. Davies also called upon the French to ensure early action on this issue during their presidency.

The report, including the proposed amendments, is scheduled for adoption in a first reading agreement during the plenary debate of 25 September 2008.
CAP REFORM Proposal
The CAP ‘health check’

Current status
The issue of global food security was raised during the Agriculture Council (19 May 2008). The Commission launched its health check proposals (20 May 2008).

What’s happening?
The issue of food prices and the agricultural market situation was discussed during the Agriculture Council. There was general agreement on the importance of addressing the structural problems in developing countries that underpin the problem, increasing research & development and, in particular, developing 2nd generation biofuels.

A number of ministers took the opportunity to outline their country’s position on the health check. The more conservative states (France, Italy, Belgium, Greece and Romania) indicated that measures to protect EU agriculture and/or increase production were necessary (i.e. the retention or even extension of the direct farm payment system) and that no changes should be considered that could fundamentally impact upon Europe’s ability to maintain its food supply. The consensus in this group is that the CAP is not responsible for the world market situation.

The more liberal Member States (Sweden, Denmark and the UK) stressed the importance of full decoupling of farm payments and swift resolution of the Doha agreement to improve the market orientation of agricultural production. These countries believe that the subsidies are partially responsible for pushing up food prices.

French agriculture minister Barnier raised the possibility of the introduction of a system of food stamps for the ‘needy’ within the EU, with particular emphasis on nutrition – similar to the new fruit and vegetables initiative launched in France.

The following day Agriculture Commissioner Mariann Fischer-Boel launched the CAP 'Health Check' in Strasbourg (20 May 2008). She stated ‘[the CAP health check] aims to simplify, streamline and modernise the CAP and give our farmers the tools to handle the new challenges they face, such as climate change’.

The contents of the proposals had been heavily trailed over the past few months to ensure no one was surprised by the Commission’s actions. Full details can be found here. The key proposals are:

- Abolition of 10% set-aside rule for arable farmers.
- Phasing out milk quotas by 2015.
- Refinement of the cross compliance rules whereby aid is linked to environmental criteria. New requirements are to be added to retain the environmental benefits of set-aside and improve water management.
- Shifting money from direct aid to rural development. Currently 5% of direct payment funds are transferred to rural development. This will rise to 13%. Additional cuts will be made for bigger farms.
- Abolition of intervention mechanisms for certain commodities, including pork, with the feed grain rate to be set at zero. Introduction of tendering for bread wheat, butter and skimmed...
milk powder.
- Refinement of criteria for assistance to sectors with special problems.
- Abolition of energy crop premium.
- Full decoupling of support (with the exception of suckler cow, goat and sheep premiums) and movement away from historical payment system across the EU.

UK Agriculture Secretary Hilary Benn has broadly welcomed the reforms. At a press conference in Brussels he stated, ‘[the] Health Check is an important step towards the Government’s longer term vision for the CAP, published in 2005, which calls for the end of all direct farm payments by 2015 to 2020, leaving the CAP targeted at the protection of the environment’. The UK Government intends to launch a public consultation on the proposals in June 2008.

JUSTICE COMMITTEE VISIT TO BRUSSELS
Proposal n/a

Current status n/a

What’s happening?
The Scottish Parliament’s Justice Committee was in Brussels (12 – 13 May 2008) as part of a fact finding mission into EU Justice policy. The members in attendance were Bill Aitken (Convener), Bill Butler (Deputy Convener), Cathie Craigie, John Wilson, Nigel Don, Paul Martin and Stuart McMillan.

The committee and the Law Society of Scotland co-hosted a roundtable discussion entitled, ‘EU Justice Matters’ in the European Parliament. The event was attended by a number of legal practitioners, EU officials, and Scottish MEPs Elspeth Atwooll (who opened the event), Ian Hudghton and David Martin as well as Andrew Duff MEP (of the Parliament’s Constitutional Affairs Committee).

The event was addressed by the Director General for Justice, Freedom and Security Jonathan Faull, Lord Mance of the House of Lords Select Committee on the EU and Richard Henderson President of the Law Society of Scotland as well as Vijay Rangarajan of UKrep and Brian Peddie of the Scottish Government.

Key issues raised by the DG during his speech included:
- The implications of transferring justice matters from third to first pillar (i.e. from unanimity to co-decision)
- Likely areas where the EU could add value in the future (tackling organised crime, child protection, international terrorism, trafficking of humans and drugs, and international crime particularly internet related).
- The absence of any desire on the part of the Commission to create a European criminal code.
- The success story represented by the European Arrest Warrant.

Key issues raised during the speech of Vijay Rangarajan, JHA Counsellor UKrep included:
- The fact that the advent of co-decision in the justice area could render the construction of EU law in this field as slow as before the advent of the Lisbon Treaty.
- The time scale of the new UK opt-ins on justice proposals (3 months) would mean that decisions (involving the Scottish Government) would have to be taken relatively quickly.
• The UK Government would have to resolve its approach to family law since the proposals coming from Europe would require significant change to the UK legal systems.
• The issue of criminal procedural rights may have to await a precedent emerging from the European Courts.

MARITIME ISSUES
Proposal
The Maritime Action Plan/The European Maritime Day

Current status
The first European Maritime Day was staged in Brussels (20 May 2008)

What’s happening?
The Maritime Action Plan (that followed the green paper) is currently being enacted. So far proposals have emerged on illegal fishing and ports, with staff working documents published on maritime clusters and ensuring a better fit between the energy and maritime policies, and communications on the ecosystem approach and the proposal to establish a maritime day. Upcoming actions include a strategy on maritime research in the maritime sectors (expected June 2008), and an offshore wind energy action plan which is expected to be adopted by the end of 2008.

The first European Maritime Day took place on 20 May 2008. A two-day conference was staged to mark the occasion, while the three presidents of the EU institutions signed a declaration in Strasbourg committing themselves to supporting and developing the EU’s maritime regions. The European Parliament also voted in support of the Piecyk report on an integrated maritime policy for the EU (20 May 2008).

The first (of what is expected to be an annual) maritime conference was staged in Brussels (19 – 20 May 2008) under the chairmanship of Fokion Fotiadis, the DG for Maritime Affairs. The event was addressed by Maritime Commissioner Joe Borg, Willi Piecyk MEP and Vice-President of the Committee of the Regions Michel Delebarre. Ministerial panels representing both national governments (France, Germany, Portugal and Norway) and regional governments (Schleswig Holstein, Brittany and Scotland) were also conducted.

The first day focused on the EU approach to maritime issues, research, industrial policy and how to continue stakeholder dialogue, while the second day explored the regional dimension of maritime policy. Common issues to emerge included:
• The need to raise awareness of marine issues, and the importance of the current dialogue with stakeholders.
• The need to deliver on the marine action plan, particularly with consultation at regional level.
• The importance of addressing ‘youth issues’ particularly in terms of education, job retention and skill development.
• The fact that the Commission would welcome comments on maritime issues at any time.

Other issues raised include:
• Developments in maritime must be rooted in the needs of the communities affected, and consultation must be comprehensive.
• The importance of the marine strategy directive for developing environmental awareness and
management.
- The importance of building upon the Barcelona convention, the Helsinki convention and OSPAR.

The event was addressed by Richard Lochhead, Cabinet Secretary for Rural Affairs. During his remarks he stressed the maritime priorities of the Scottish Government as: (1) protection of the marine environment; (2) sustainable economic development of the maritime regions; (3) the simplification of governance. He welcomed the ongoing review of the Common Fisheries Policy and stressed the impact of the current fuel situation on fishermen.

NEW ROLE FOR NATIONAL PARLIAMENTS
Proposal
The Lisbon Treaty

Current status
The Lisbon Treaty, once ratified, will enhance the role of National Parliaments in the development of EU legislation.

What’s happening?
The Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) met in Slovenia (7-8 May 2008) to discuss the implications of the provisions in the Lisbon Treaty for National Parliaments.

The Treaty will grant national parliamentarians the right to raise objections against Commission legislative proposals - the ‘yellow and orange card’ procedures – where it is believed that the legislation does not comply with the principle of subsidiarity. For national parliaments to secure a review of the proposal (the yellow card) at least 18 of the 54 chambers in the EU must support the concern. To strike down a proposal (the orange card) a simple majority of national parliaments is required.

A number of national parliaments have already begun to adapt their procedures to operate the subsidiarity mechanism. The French Parliament has changed its constitution. The Finnish and Belgian Parliaments intend to revise their rules of procedure. The Belgians will also create a parliamentary department specifically to deal with the mechanism. The Greek and Spanish Parliaments have begun to examine the mechanism. National Parliaments have also requested that the European Commission provide a weekly list of all new documents published.

THE REGIONAL DIMENSION OF SUBSIDIARITY
Proposal
The Lisbon Treaty

Current status
The regional dimension of subsidiarity was discussed at a conference co-hosted by the CoR (Committee of the Regions), REGLEG (the Conference of European Regions with Legislative Power) and CALRE (Conference of Chairmen of the Legislative Regional Parliaments of Europe) (19 May 2008).

What’s happening?
The aim of the conference was to examine the application of the principle of subsidiarity from the point of view of regional governments and parliaments (with legislative power) and from the standpoint of the EU institutions and bodies.

The conference discussions were divided into two sessions covering: (1) how regional parliaments and governments with legislative power intend to apply the
subsidiarity mechanism, and (2) the role of the EU institutions (Commission, Parliament, CoR and the European Court of Justice) in the application of the subsidiarity principle. The conference was addressed by Kris Peeters and Geert Bourgeois of the Flemish Government, Marleen Vanderpoorten of the Flemish Parliament, Andreas Kiefer, representative of the Austrian Land, Anton Kokalj from COSAC (see above) and Ernest Benach from CALRE. (A full list of speakers can be found here).

A number of points emerged from the discussion:

- The differences in the internal constitutional arrangements within each Member State mean that it would be impossible to have a common approach across the regions. This is particularly true in federal systems vis-à-vis devolved systems. Outside of federal systems, there is no compulsion on national parliaments to consult the regional parliaments.
- Each of the conference sponsors (CoR, CALRE and REGLEG) sees a role for themselves in co-ordinating regional responses to questions of subsidiarity. How such collaboration or co-operation will work in practice has not been established.
- The issue of which regional body was best placed to address subsidiarity issues (parliament or government) was discussed with a general feeling that (except in case of minority administration or disagreement between government coalition partners) the regional government would take the lead.
- Both Flanders region and the Austrian Land have recognised that the change will require greater capacity. There was recognition that much of the preliminary work would be conducted by officials.
- The Austrian Land have instituted a system where one Land leads on an issue tests subsidiarity and informs the other Land via a co-ordinating office within the Austrian Permanent Representative in Brussels. The Austrians use the green and white paper stage to identify areas of potential concern well in advance of the point at which the subsidiarity question becomes time limited.
- The Commission may issue a consultation on how the subsidiarity mechanism will operate and potential guidelines. This would emerge in early June 2008.
- COSAC have undertaken two subsidiarity tests (3rd railway package and matrimonial matters). On both occasions, although they received a number of responses from the national parliaments, little common ground emerged. A further test is anticipated on the proposal on succession and wills (expected to emerge in June 2008). The CoR has also undertaken two tests but experienced difficulty in brokering common ground within the allotted time (6 weeks then, 8 weeks under the Lisbon Treaty).
- The role of the ECJ in proceedings is complicated, since it is through member states rather than regions that cases are brought. However, there may be a role for the CoR in operating on behalf of a group of concerned regions.
- There was agreement that guidelines would be useful, and that a body able to proffer advice would be invaluable.
Other news

- **eHEALTH.** The annual EU eHealth Conference (**7 May 2008**) adopted the [Portorož declaration](#) laying the basis for future work in this field. It identified three initiatives that must operate harmoniously to overcome the challenges ahead - how to deploy telemedicine and innovative ICT tools for chronic disease management, more research and a transparent legal framework to define the responsibilities of all parties involved in the eHealth process.

- **The Lisbon Treaty.** Latvia and Lithuania have now ratified the Treaty (**8 May 2008**). Estonia is expected to ratify later this month. Ireland will hold its referendum on the treaty on **12 June 2008**.

- **Animal Health.** The European Parliament has been debating the Commission ‘Animal Health Strategy 2007-2013’ (**20 May 2008**).

- **Ministerial visit.** Scottish Transport Minister, Stewart Stevenson MSP, will be in Brussels (**27 May 2008**) for meetings with officials from DGs TREN (transport) and ENVIRONMENT. He will also meet with Scottish MEPs.

- **Anti-discrimination.** The Commission will publish a comprehensive social policy package including anti-discrimination proposals (**June 2008**). This follows the adoption of an own-initiative report in the European Parliament that stressed the particular vulnerability of people who are subject to multiple forms of discrimination; for example, on race, disability or sexual orientation grounds (**20 May 2008**).

- **New Commissioners.** The new Italian Commissioner Antonio Tajani, who is to hold the Transport portfolio, will face European parliamentarians on **6 June 2008**. The former Transport Commissioner, Jacques Barrot will now take up the Justice portfolio. He will face the European Parliament’s Civil Liberties committee by **12 June 2008**.

- **European Institute of Technology (EIT).** A decision on the host city is expected to be taken at the Competitiveness Council (**30 May 2008**). Failing that, a decision will be taken at the European Summer Council (**19 – 20 June 2008**).

- **Danish vote.** The Danish Government has stated that within the next two months it will set a date on holding a referendum on joining the euro.
IAN HUDGHTON MEP

In the Internal Market and Consumer Protection Committee I have been heavily involved, as Shadow Rapporteur for my political group, in recent work which it is hoped will bring an end to scams operating in the timeshare and holiday industry. Every year thousands of holidaying Scots are targeted by salesmen in Europe's resorts - and often they end up considerably out of pocket as a result of conmen and scammers.

The European Parliament has been working, since July 2007, on a proposal from the Commission aimed at outlawing the practices of unscrupulous salesmen, and a compromise package, negotiated by the Rapporteur and group shadows, is likely to be agreed by Parliament before the summer recess.

Every year MEPs receive letters from constituents who have been ripped off by dodgy salesmen while on holiday. These salesmen operate in all the top resort areas of Europe and target holidaymakers who are enjoying their break, having fun and, often, not paying close attention to what they're signing up to. This can lead to people losing thousands of pounds of savings and gaining nothing in return from fake timeshare schemes and 'holiday clubs'.

This is something which has a truly international aspect - and so when a holidaymaker from, say, Lanarkshire finds he's been ripped off in Lanzarote it can be very difficult to try to get that money back. However, by taking action at an EU-wide level we can hopefully see off the conmen and ensure that tourists don't get into trouble in the first place.

Over the past few months I've negotiated with fellow MEPs from all countries and political parties to come up with a package which will make the law as tight as possible. We think we've now got a deal together which will be good for holidaymakers and good for legitimate tourist agents and salesmen.

European law currently applies only to fixed-property timeshares. However, over the years fraudulent salesmen have started selling other things such as "holiday clubs" and timeshares on boats, caravans etc. These schemes are designed to fall outwith current timeshare regulation.

The new package will require timeshare and holiday salesmen to provide full written details of who they are and what they are selling, give consumers a period with the right to withdraw from anything they have signed, seek to ban advance payments, and regulate the timeshare "exchange" industry. The proposal will also extend the law to cover "long term holiday products". These are often
schemes similar to timeshares - but fall outside existing laws and so are open to abuse and scams.

There are, of course, many perfectly reputable timeshare operators, including several with major resorts in Scotland which are extremely important to the economy of our country. Our challenge, in drafting new rules aimed at protecting consumers from rogue traders, is to achieve that aim without adding unnecessarily to the burden of regulation upon existing traders who operate legitimate enterprises in the timeshare and associated tourism marketplace.

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