



House of Commons  
Committee of Public Accounts

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# Lost in translation? Responding to the challenges of European law

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**Twenty-seventh Report of  
Session 2005–06**

*Report, together with formal minutes,  
oral and written evidence*

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## The Committee of Public Accounts

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### Publications

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### Committee staff

The current staff of the Committee is Nick Wright (Clerk), Christine Randall (Committee Assistant), Emma Sawyer (Committee Assistant), Ronnie Jefferson (Secretary), and Luke Robinson (Media Officer).

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## Summary

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As a member of the European Community, the United Kingdom government is obliged to comply with European Community law and to incorporate European legislation into national law within a specified timetable. Any delays may result in an infringement notice and could, ultimately, result in a substantial fine. The Department for Environment, Food and Rural Affairs (the Department) is responsible for implementing around 30% of the legislation from Europe.

Over-implementation (often referred to as ‘gold-plating’) can include introducing legislation more quickly than the European Commission requires, and introducing regulations or enforcement mechanisms that go beyond those specified in the Directive. The Department’s aim is to minimise the burden on industry and, as a consequence, to avoid over-implementation of Directives, which could put industry at a commercial disadvantage with competitors elsewhere in Europe.

The first step in implementing European legislation is to convert the legislation into national law. This process is called transposition. When departments transpose Directives there are two main methods which they can use: copy-out or elaboration. Copy-out transcribes the Directive into United Kingdom legislation with no additions or changes. Elaboration augments the Directive wording, for example to provide greater clarity. Cabinet Office guidance recommends that Directives should normally be implemented by copy-out and that elaboration should occur only where the benefits outweigh the costs. Of the seven Directives used as case examples in the Comptroller and Auditor General’s Report,<sup>1</sup> three had used the copy-out method of transposition and four included some elaboration.

The Government seeks to transpose European law into UK legislation within a relatively tight timeframe. The United Kingdom has met the European Commission’s target of 1.5% of transpositions outstanding.

Preparations for implementation could be enhanced. Industry would benefit from more timely and better quality guidance on when legislation is likely and its impact. Information, guidance and communication strategies should be adapted to meet the needs of smaller, less sophisticated businesses as well as large corporations.

Programme and project management should reflect all the phases and challenges of European legislation. Appropriate and sufficient expertise should be available at all stages from negotiation through to implementation. Departments should work with other Member States and the devolved administrations to clarify their interpretation of Directives and share good practice. Wherever practicable, the Department should work with the Devolved Administrations to transpose Directives in parallel rather than sequentially to minimise the risks of delay.

On the basis of a Report by the Comptroller and Auditor General the Committee took

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1 C&AG’s Report, *Lost in translation? Responding to the challenges of European law* (HC 26, Session 2005–06)

evidence from the Department on its transposition of European law. Our conclusions and recommendations have wider application across all departments and other bodies responsible for transposing and implementing European Union legislation.

## Conclusions and recommendations

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- 1. The United Kingdom has a good record on transposing European Directives in a timely manner, being within the European Commission's target of no more than 1.5% of transpositions outstanding in 2005.** The Department considered meeting its legal obligations to transpose Directives in a timely manner as important, and did not believe this approach left United Kingdom businesses at a competitive disadvantage.
- 2. Delays in implementation arising from the Department's desire to obtain greater clarity from the European Commission can be costly for those affected by the Directive.** The fridge mountains of 2002 cost Local Authorities some £46 million for example. Where ambiguities exist, Departments should estimate the potential costs to the taxpayer and to industry of delay, so as to determine when the costs and risks associated with seeking further clarity outweigh the potential benefits.
- 3. The Department's record on providing timely guidance to those affected by new regulations has been poor in the past.** In 2003 it provided such guidance at least twelve weeks before the legislation came into force in only 20% of cases. To improve performance the Department is applying Programme and Project management techniques to transposition and if effective, the approach should be rolled out more widely within the Department and to other departments engaged in implementing European legislation.
- 4. In drafting guidance the Department should take account of the nature of the businesses or industry affected and adapt their guidance and communication strategy accordingly.** A Directive which affects a large number of relatively small owner managed businesses, such as in the farming industry for example, may need a different style and approach to one affecting an industry largely comprised of major corporations. Departments also need different communication strategies to make sure the key changes required have been understood properly.
- 5. To minimise delays and meet transposition deadlines, Departments should encourage the Devolved Administrations to transpose Directives in parallel rather than sequentially.** Wherever practicable co-ordinated approaches across each Administration help to minimise the regulatory burden on United Kingdom industry.
- 6. Successful implementation is dependent on having adequate resources with the right skills and expertise available throughout the process from negotiation to implementation.** Departments should take account of likely timescales in putting together negotiation and implementation teams, and deploy staff flexibly to provide both continuity and access to appropriate knowledge and expertise.
- 7. The Department accepted that over-implementation of Directives could occur, but only when the Government chose to add policy initiatives of its own.** If Departments have genuinely good reasons for over-implementation, the Minister's attention should be drawn to the specific areas in proposed regulations or instruments which go beyond the minimum requirements of the Directive, to avoid

placing any unnecessary burdens upon industry. The transposition method which has been used (copy-out or elaboration) should be highlighted, with the reasons for any use of the elaboration method.

8. **The legal status of material implemented with Directives can be unclear, causing confusion for those in affected businesses.** An example is the Pig Welfare Code implemented with the Pig Welfare Directive in 2003. The Department should find out from users whether the language and layout used in such codes makes the legal status of each recommendation clear, and whether they understand which recommendations are a legal requirement and which are guidance. The Department should use the findings to improve the clarity of such Codes in future.

# 1 Timeliness of transposition and guidance

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1. The government seeks to transpose European law into United Kingdom legislation to a relatively tight timeframe. Early implementation could disadvantage United Kingdom businesses, whereas failure to implement on time could result in the European Court of Justice imposing a fine. Although European fines can, on occasion, be re-negotiated to mitigate their impact (for example the fine on Italy for exceeding its milk quotas in the 1990s<sup>2</sup>), the amount can be substantial. The United Kingdom government has not been fined for late or poor implementation. The European Court of Justice has, however, imposed fines on Spain, France and Greece. According to the Official Journal of the European Union, France has paid some 20 million Euros for non compliance relating to fishing, and Greece almost 5 million Euros for non compliance with waste legislation. The Spanish case related to inland bathing water quality but is still under investigation.<sup>3</sup>

2. The United Kingdom has met the European Commission target of less than 1.5% of transpositions outstanding beyond the relevant deadline, having 1.4% of transpositions outstanding in 2005. Fourteen of the twenty-five Member States did not achieve the 1.5% target in 2005. The United Kingdom was joint seventh in the 2005 Internal Market Scoreboard (**Figure 1**) compared to third in 2004. The change in position was due in part to other Member States reducing their backlog but also the inclusion of the ten accession Member States from May 2004. The Department for Environment, Food and Rural Affairs (the Department) is responsible for implementing a significant proportion (around 30%) of European Union law into United Kingdom legislation. Thirty eight of the United Kingdom's infringements in 2003 and 2004 were due to late transposition by the Department for Environment, Food and Rural Affairs and an additional 23 were due to poor or late implementation.<sup>4</sup>

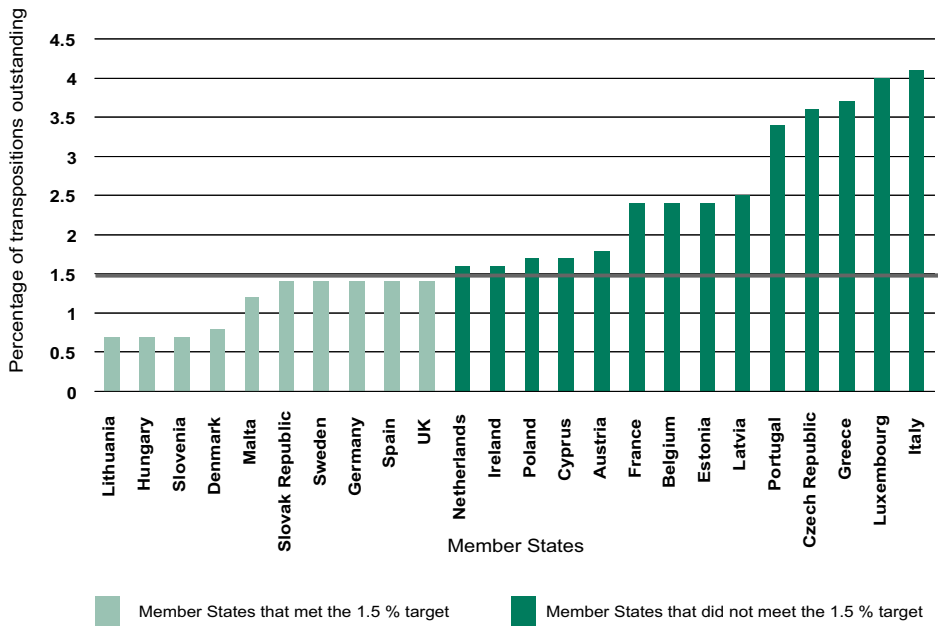
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2 Ev 18

3 Ev 16–17

4 Qq 8–9, 54; C&AG's Report, paras 1.5–1.6, 3.6; European Commission, *Internal Market Scoreboard No 14*, July 2005

**Figure 1: The UK is one of eleven Member States achieving the 1.5% target for outstanding transpositions in 2005**



Source: European Commission, Internal Market Scoreboard No 14, July 2005

3. The Department accepted that the number of infringements should be lower. Infringements could arise for reasons of timeliness of transposition and implementation or because of challenges to the way Directives had been implemented. There would always be room for disagreements about the way in which Directives were implemented which the European Commission might want to challenge and the Government to defend. The Nitrates Directive 1991/676/EEC had, however, taken nine years to resolve. The Department had put in place mechanisms to improve implementation of Directives to cut down the elapsed time.<sup>5</sup>

4. Based on the Internal Market Scoreboard data (Figure 1), countries such as Germany were making efforts to transpose European Directives in a timely manner, but others, including France, Greece and Italy were well beyond the 1.5% target for outstanding transpositions. The Department did not consider it relevant to look at delays in other countries but considered it should focus on its legal obligations to transpose all Directives in a timely manner.<sup>6</sup>

5. The Department's implementation of Directives can be delayed by a desire to obtain greater clarity from the European Commission on interpretation of the Directive. The Ozone Depleting Substances regulation 2037/2000/EC was such an example. The uncertainties over this regulation had, however, proved costly, resulting in local authorities incurring costs of some £46 million in respect of the fridge mountains of 2002.<sup>7</sup>

5 Qq 4-9

6 Q 54

7 Q 3

6. To facilitate planning for the impact of new Directives, industry and others affected require a clear implementation timetable, and timely and adequate guidance. The Small Business Service recommends that departments issue guidance at least twelve weeks before new legislation comes into force. The Department's record on meeting the guideline was poor, having failed to meet it for 80% of new regulations during 2003. To improve performance the Department was using programme and project management to plan implementation timetables better, and inviting the Small Business Service to contribute to make sure business guidance was user friendly. Guidance also needs to take account of the needs of the intended recipients since the needs of large corporate entities and small owner managed businesses can be very different. The farming community had for example been confused by the new rules on disposal of dead animals contained in the Animal By-Products Regulation 1774/2002/EC.<sup>8</sup>

7. Having the right experts available is important to successful negotiation and transposition of Directives and in handling casework afterwards. The Department now involved lawyers from an early stage as an integral part of a multi-disciplinary policy team, and to challenge the effectiveness of proposed regulations. The Department sought to obtain as much clarity as possible at the negotiation stage, but considered that ambiguities and uncertainties were inevitable in any legal instrument signed up to by 25 Member States. Lawyers were now seen within the Department as a support in the transposition process rather than an obstacle, and had become more adventurous in their analysis and suggestions rather than risk averse.<sup>9</sup>

8. Devolved administrations are also responsible for implementing Directives. The Department confirmed that if the United Kingdom were to be fined for late implementation, the cost would fall to the administration which had not implemented the Directive correctly. Generally devolved administrations waited for DEFRA to transpose in England, so they could use DEFRA's experience to transpose the Directive quickly thereafter. Although the Department involved devolved administrations in their transposition discussions, this sequential rather than the parallel approach could lead to delays in transposition. All parties in the United Kingdom could co-operate to produce a single piece of transposing legislation, but rarely did so. The Department could not impose a single Statutory Instrument on devolved administrations as it was each administration's right to determine how Directives should be transposed.<sup>10</sup>

9. Significant costs can arise on handling infringements (sometimes called infractions), especially if the Government decides to challenge the European Commission's interpretation of the United Kingdom's transposition or implementation. The Department did not consider such situations arose because of under resourcing at the implementation stage, but that it was important to prioritise use of resources appropriately where resources were under pressure. When processing United Kingdom legislation, the Department put in place a fully resourced Bill team with a finite life because procedures were generally faster than in Europe. A team transposing and implementing a European Directive or set of regulations faced a very different timescale, and hence its composition was more likely to

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8 Qq 10–12, 24, 44

9 Qq 36, 39, 29, 66–67

10 Qq 59–62, 68

change. All negotiations on a Directive had to take into account the implementation issues, but application of good project management techniques was more important in the Department's view than having the same person seeing through all stages of Directive from negotiation to implementation. There were sometimes benefits in using different people to negotiate and implement, as negotiators could be inclined to implement what they intended to draft as opposed to what was finally agreed, and to re-fight battles lost in negotiation. The Department needed to understand better the desired end result at the time it started negotiations.<sup>11</sup>

10. In five out of the eight cases examined by the National Audit Office, the Department did not have suitable planning documents to manage transposition effectively. The Department has now adopted the government-wide Programme and Project Management (PPM) initiative to manage transposition projects. The planning tool was designed to improve Whitehall's delivery of projects and programmes and the Department had adapted and tailored it to manage the transposition and implementation of European law within its Environment Directorate-General. Subject to the successful completion of the 12 month pilot, the tool would be rolled out to cover the other Directorate-Generals in the future.<sup>12</sup>

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11 Qq 20–23

12 Qq 7, 12, 34, 44, 79; C&AG's Report, para 3.18

## 2 Over implementation of European Union legislation

11. There is a commonly held view that the United Kingdom regularly “gold-plates” European Union law, leaving businesses subject to tougher regulations than competitors in other European countries (see **Figure 2**). United Kingdom Government policy is, however, to avoid unnecessary over implementation.<sup>13</sup>

**Figure 2: Types of over-implementation or gold-plating**

Over-implementation occurs when implementation goes beyond the minimum necessary. This could be in a number of ways:	
•	Extending the scope of the European law in national law or adding requirements to those in the European legislation.
•	Implementing earlier than required by the European legislation.
•	Not taking advantage of derogations that are available.
•	Providing sanctions and enforcement mechanisms that go beyond the minimum needed.

Source: Cabinet Office, *Transposition Guide: How to implement European Directives effectively*

12. There are two primary methods of transposing European Directives: copy-out and elaboration. Copy-out involves transcribing European legislation almost word for word into United Kingdom law, and this was the most straightforward method. It allowed the legislation to mirror the Directive. The alternative is to provide some elaboration, usually to provide more detail or clarification.

13. The Foreign and Commonwealth Office commissioned a report on the “Implementation of European Legislation” (the Bellis Report), which looked at implementation in different Member States. It recommended that copy-out should be the preferred method of transposition in order to avoid over-implementation. In response, the Government in the pre-budget report of December 2004, stated that unless there was clear justification for elaboration, the wording in United Kingdom legislation should mirror that in the Directive. The Department confirmed that it started from the perspective that copy-out was the preferred option, but it would elaborate where necessary to make it clearer for those businesses likely to be affected. Of the seven Directives reviewed by the National Audit Office three were transposed using the copy-out method, and four were transposed using a mixture of copy-out and elaboration.<sup>14</sup>

14. The Department did not consider that providing greater clarity through transposition led inevitably to extra provisions and increased burden for those regulated. Equally DEFRA, and MAFF its predecessor, had examples of over implementation where the relevant Government had used the implementation of a Directive to introduce policies of

<sup>13</sup> Qq 14–17, 54; C&AG’s Report, para 1.13 and Figure 6

<sup>14</sup> Qq 27–33; C&AG’s Report, paras 2.13, 2.19–2.20

its own. An example of over implementation is the Animal By-Products Regulation 1774/2002/EC where additional requirements on record keeping have been included for United Kingdom farmers, adding potentially to their costs and reducing competitiveness. The Department denied this example was unnecessary gold plating but argued the provisions were needed to make monitoring of compliance possible.<sup>15</sup>

15. A further potential example is the Farming Code of Practice for the Welfare of Pigs which some farmers considered imposed higher welfare burdens on United Kingdom pig farmers than elsewhere. Such Codes were known as statutory codes because procedures for their making are laid down in legislation, including the requirement that they must be debated in both Houses of Parliament. The Pig Welfare Code was drawn up after full public consultation, including meetings with the pig industry. The Codes were not statutory in the sense of having the force of law, and their aim was to provide guidance on good husbandry practice. The Codes might nevertheless contain certain elements which reflected legislative requirements where non compliance would be an offence. The Codes reflected such requirements by using language such as “must” and those since 2000 featured boxes which quoted the relevant legislation. Recommendations which gave good husbandry advice acted as guidance, and non compliance was not an offence. They might, however, count as evidence in a relevant prosecution, such as where a farmer was being prosecuted for causing unnecessary distress to livestock.

16. The Department confirmed that Ministers would only be advised to go beyond a Directive if the benefits would exceed the costs. Ministers saw the draft final regulations, a completed regulatory impact assessment, a summary of issues raised in consultation and the impact on the final regulations. Ministers usually sought information on the action taken by other Member States. The Department would expect to advise a Minister clearly if it were going beyond the terms of a Directive.<sup>16</sup> Currently, however, Departments do not advise Ministers on whether copy-out or elaboration has been used as the transposition method.

17. The Department took the “Better Regulation: Less is More” Agenda seriously and it was informing its approach to implementation of Directives to minimise administrative burdens. The quality of central guidance had improved, and the Department looked closely at the effectiveness of the regulations for which it was responsible.<sup>17</sup>

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15 Qq 13–17, 25–26

16 Qq 49–53

17 Qq 18, 35, 39

# Formal minutes

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**Wednesday 1 February 2006**

Members present:

Mr Edward Leigh, in the Chair

Mrs Angela Browning

Mr David Curry

Helen Goodman

Mr Austin Mitchell

Sarah McCarthy-Fry

Jon Trickett

Kitty Ussher

Mr Alan Williams

A draft Report (Lost in translation? Responding to the challenges of European law), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 17 read and agreed to.

Introduction read and agreed to.

*Resolved*, That the Report be the Twenty-seventh Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned until Monday 6 February at 4.30 pm.]

## Witnesses

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**Wednesday 19 October 2005**

*Page*

**Mr Mark Addison, Mr Donald Macrae, and Ms Sue Ellis**, Department for Environment, Food and Rural Affairs

Ev 1

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National Audit Office

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## List of Reports from the Committee of Public Accounts Session 2005–06

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Second Report	The regeneration of the Millennium Dome and associated land	HC 409 ( <i>Cm 6689</i> )
Third Report	Ministry of Defence: Major Projects Report 2004	HC 410 ( <i>Cm 6712</i> )
Fourth Report	Fraud and error in benefit expenditure	HC 411 ( <i>Cm 6728</i> )
Fifth Report	Inland Revenue: Tax Credits and deleted tax cases	HC 412 ( <i>Cm 6689</i> )
Sixth Report	Department of Trade and Industry: Renewable energy	HC 413 ( <i>Cm 6689</i> )
Seventh Report	The use of operating theatres in the Northern Ireland Health and Personal Social Services	HC 414 ( <i>Cm 6699</i> )
Eighth Report	Navan Centre	HC 415 ( <i>Cm 6699</i> )
Ninth Report	Foot and Mouth Disease: applying the lessons	HC 563 ( <i>Cm 6728</i> )
Tenth Report	Jobskills	HC 564 ( <i>Cm 6724</i> )
Eleventh Report	Local Management of Schools	HC 565 ( <i>Cm 6724</i> )
Twelfth Report	Helping those in financial hardship: the running of the Social Fund	HC 601 ( <i>Cm 6728</i> )
Thirteenth Report	The Office of the Deputy Prime Minister: Tackling homelessness	HC 653 ( <i>Cm 6743</i> )
Fourteenth Report	Energywatch and Postwatch	HC 654 ( <i>Cm 6743</i> )
Fifteenth Report	HM Customs and Excise Standard Report 2003–04	HC 695 ( <i>Cm 6743</i> )
Sixteenth Report	Home Office: Reducing vehicle crime	HC 696 ( <i>Cm 6743</i> )
Seventeenth Report	Achieving value for money in the delivery of public services	HC 742 ( <i>Cm 6743</i> )
First Special Report	The BBC's investment in Freeview: The response of the BBC Governors to the Committee's Third Report of Session 2004–05	HC 750
Eighteenth Report	Department for Education and Skills: Improving school attendance in England	HC 789
Nineteenth Report	Department of Health: Tackling cancer: improving the patient journey	HC 790
Twentieth Report	The NHS Cancer Plan: a progress report	HC 791
Twenty-first Report	Skills for Life: Improving adult literacy and numeracy	HC 792
Twenty-second Report	Maintaining and improving Britain's railway stations	HC 535
Twenty-third Report	Filing of income tax self assessment returns	HC 681
Twenty-fourth Report	The BBC's White City 2 development	HC 652
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Twenty-sixth Report	Assessing and reporting military readiness	HC 667
Twenty-seventh Report	Lost in translation? Responding to the challenges of European law	HC 590

The reference number of the Treasury Minute to each Report is printed in brackets after the HC printing number



# Oral evidence

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## Taken before the Committee of Public Accounts

on Wednesday 19 October 2005

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon  
Angela Browning  
Greg Clark

Mr Ian Davidson  
Helen Goodman  
Mr Alan Williams

**Mr Tim Burr**, Deputy Comptroller and Auditor General, National Audit Office, was in attendance and was further examined.

**Ms Paula Diggle**, Second Treasury Officer of Accounts, HM Treasury, was in attendance.

### REPORT BY THE COMPTROLLER AND AUDITOR GENERAL:

#### Lost in Translation? Responding to the Challenges of European Law (HC 26)

*Witnesses:* **Mr Mark Addison**, Acting Permanent Secretary, **Mr Donald Macrae**, Solicitor to Defra and Director General for Legal Services, and **Ms Sue Ellis**, Head of Waste Management Division, Department for Environment, Food and Rural Affairs, examined.

**Q1 Chairman:** Good afternoon, and welcome to the Committee of Public Accounts where today we are discussing the transposition of European law and the subsequent preparations for implementation. We welcome Mark Addison, who is the acting Permanent Secretary and Accounting Officer at the Department for Environment, Food and Rural Affairs. Is this your first appearance before us?

**Mr Addison:** It is indeed.

**Q2 Chairman:** What a pleasure for you! Do you want to introduce your team?

**Mr Addison:** On my right is Donald Macrae, who is the Solicitor to Defra and the Director-General for Legal Services, and on my left Sue Ellis, who is the Head of our Waste Management Division.

**Q3 Chairman:** Mr Addison, I will address my questions to you and you can pass them on if you wish. Could you please start by looking at page 20 of the Comptroller and Auditor General's Report which deals at Case Example 1 with the Ozone Depleting Substances Regulation which of course led to the fridge mountain where costs of £46 million were loaded on to local authorities because of the uncertainty of the interpretation of that particular Regulation. Can you give us an assurance this will not happen again?

**Mr Addison:** I can certainly assure you that we have taken steps in the Department to improve the way we go about the implementation of European Directives and the transposition of European Directives and the transposition where necessary of Regulations. I think it would be sensible, if I may, in a moment to ask my colleague Sue Ellis, who is something of an expert on that particular Directive, to comment, but I would just say that the key issues here were, as you will know, well looked at by the

EFRA Select Committee, and in the Government's response to that Committee the Government made clear that whilst there were lessons to be learned from the experience they were clear that the implementation of the Directive had not been mishandled. In particular, the Government had tried over a very long period to get clarity from Europe as to what precisely the implicational meaning of this Directive was. That was essentially what was responsible for the delay. If I may ask my colleague, Sue.

**Ms Ellis:** You asked about the future. The costs of treatment and recycling of fridges, of course, will be dealt with by implementation of the WEEE Directive which the Government has announced will start from June next year. At that point the costs of recycling and treatment will be borne by the producers of the waste electrical and electronic equipment and the burden will not fall on local authorities.

**Q4 Chairman:** Mr Addison, can I now ask you about the number of infringements that you have to put up with. This is mentioned in Paragraphs 1.15 to 1.17 on Page 15. There are 30 or so infringements which the Department incurs each year, is that right, from the European Commission?

**Mr Addison:** Yes, it runs at roughly that rate. In fact, the number of infringements—

**Q5 Chairman:** And how do you justify such a large number?

**Mr Addison:** We accept that the number of infringements should be lower. They arise for two reasons. They arise for reasons of timeliness of implementation and they arise as a result of challenges to the way we have implemented. On both counts we are seeking to do better. Actually if you

look at our record, as the Report makes clear, compared with other Member States, our record (in terms of timeliness at any rate) of implementation of Directives is quite good. In terms of the league table of the old Member States, constructed when the Report was researched, we are still third in the pecking order in the league table of old Member States. That excludes the new ones. In many ways our record on the timeliness of implementation is not bad. We can still improve it and we are working at it.

**Q6 Chairman:** Let me give you one example. If you look at Page 21 and the timeline charting the infringement case on the Nitrates Directive, here we have an example of one Directive taking up to nine years to resolve, starting in May 1995 and finally ending up in December 2004. How can you possibly justify that?

**Mr Addison:** As I said before, we would certainly like to do better.

**Q7 Chairman:** You have to do a lot better than that, do you not?

**Mr Addison:** We believe we have set in hand mechanisms to get a grip on the management of the implementation of the Directives. One of the reasons why this particular Directive took a long time was because of the nature of the disagreement with the Commission and the challenge that we pursued through the European Court. That inevitably takes longer to resolve. I should say there will always be room for disagreements about the way in which Directives are implemented and the Commission may wish to challenge the Government and the Government may well wish to defend it. That is bound to take some time. We hope the mechanisms that we have put in place to improve the management of these processes will at least cut down some of the time that has elapsed during the course of this particular process.

**Q8 Chairman:** You mentioned your pecking order. There is this document called the "Internal Market Scoreboard", which has been circulated to you and to Members, PAC 05-06/029. On the back page it says: "Germany's achievement is remarkable as it has completely reversed its position from tail end in 2004 to top end in 2005. It shows that, if the necessary political will is present and the necessary resources are devoted to it, the 1.5% target can be achieved, even in the short term." if Germany can do it why can we not do it?

**Mr Addison:** We do achieve the 1.5% target.

**Q9 Chairman:** Why did we not have a dramatic improvement in our position the same as Germany has managed to do?

**Mr Addison:** I think a dramatic improvement in the position from third out of 15 would be quite difficult. It would mean effectively that we would have to get to first. Some of the steps that we are taking, which the Report mentions, will I hope push us further up that league table but once you have got to the level of 1.4%, which is our current performance, it is quite difficult to improve without fundamentally changing

the way in which the Department might take the view for instance that it wished to implement Directives or challenge Commission decisions on transposition.

**Q10 Chairman:** Can we talk about guidance now. If you look at Page 40, Paragraph 4.12 it shows you there that you failed to provide timely guidance to those implementing European laws in over 80% of cases. Is that right?

**Mr Addison:** If it is in the Report it is right.

**Q11 Chairman:** So what is the reason for that in Paragraph 4.12? Surely this is very important, is it not, giving guidance to people?

**Mr Addison:** It is indeed and I accept that our record on guidance has not been good enough. The Report also says, which it links with this, that in terms of consultation we have quite a strong record by comparison with other government departments.

**Q12 Chairman:** So what are you doing about it?

**Mr Addison:** We have taken a number of steps to make sure we get guidance out on time. The first step we have taken is the one I mentioned earlier of generally getting a stronger grip on the timetable for implementing these Directives. That means looking ahead and working out timetables so that we make sure we have enough time to issue the guidance and plan that from an earlier point. Secondly, we are inviting the Small Business Service to come in to help us make sure we construct guidance which is going to be user friendly and well received. I would just say on some of the Directives where we have been, I think rightly, taken to task in this Report for issuing late guidance, we have been in very close touch with the industries concerned so there should be no surprises about the final content of the guidance. The industries will have known the shape that the implementing regulations were likely to take. It is not as though this guidance hits them cold, if you like, but I accept that we need to do better in terms of timeliness.

**Q13 Chairman:** Thank you very much. Let us pass to a very important issue which is the "elaboration" method of transposition, otherwise known as gold-plating. This is dealt with on Page 25, Paragraphs 2.13 to 2.20. Obviously you can provide greater clarity of what needs to be done and when, but do these additional words that you put in these Directives lead inevitably to extra provisions and hence increased burdens and gold-plating?

**Mr Addison:** No, I do not think they do.

**Q14 Chairman:** Give us your reasons then.

**Mr Addison:** I think the Report is very fair in the sense that it explains there is a distinction between elaboration, that is the use of additional words in the transposing of regulations to explain the meaning of the Directives, and gold-plating, which is the addition of new requirements which are not actually contained in the Directive itself. The Report notes that simply because you may explain more and use more words that does not constitute gold-plating.

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We accept that argument and would not recognise gold-plating in the particular case being alluded to here.

**Q15 Chairman:** So this gold-plating is a myth, is it?

**Mr Addison:** I do not think so.

**Q16 Chairman:** It is a commonly held myth, is it not?

**Mr Addison:** Yes.

**Q17 Chairman:** If you think it is a myth, say so, tell us.

**Mr Addison:** Well, I do not think in the context of these particular Directives and Regulations there have been examples of gold-plating but there are examples of over-implementation and Defra and MAFF before it have some of those. Over-implementation in the sense that the Government decided for policy reasons to use the opportunity of the implementation or the transposition of a Directive to introduce some policies that it particularly wanted to pursue. In that sense they could be accused of gold-plating. However, that would be a conscious policy decision rather than an inadvertent error going beyond the terms of the original Directive.

**Q18 Chairman:** My last question is that in our brief it reminds us that in the Budget of 2005 the Government accepted the recommendations of the Better Regulation Task Force publication "Regulations: less is more; reducing burdens, improving outcomes". This committed departments to measuring and reducing the administrative burden faced by businesses and other organisations in the UK. How is that going to affect the way that you negotiate and transpose European legislation in the future?

**Mr Addison:** The "Less is More" report and the concern about the administrative burden of regulations is one that Defra certainly takes very seriously. We like to think we were a little bit ahead of the game in terms of committing to the reduction of the administrative burden. We have a 25% target across the Department already for the reduction of administrative burdens associated with regulation. That is not to comment, of course, on the outcomes that we are trying to secure from the regulations. We remain absolutely committed to the protection that the regulations seek to provide but we do want to reduce the administrative overhead. That point of view and the Government's wider point of view informs the way we go about negotiations in Europe and it informs the way we will go about the implementation of European Directives. We are monitoring and very keen to ensure that the administrative burden is kept to the minimum, consistent with the achievement of the objective in the Directive.

**Chairman:** Thank you. Helen Goodman?

**Q19 Helen Goodman:** The Chairman has already asked you about the large number of infringement cases and you said in part this is because deadlines have not been hit. Have you got any sense of the cost of these infringement cases?

**Mr Addison:** I do not think that I can give you a quantified figure. My colleagues may be able to help on that but I rather doubt it.

**Q20 Helen Goodman:** The reason I ask is that one of the points that is made in the Report is that from time to time there seems to have been under-resourcing so I was wondering whether, in fact, resources were being used up on infringement cases when they would rather have been used on making sure the mistake was not made in the first place?

**Mr Addison:** In terms of infringements and infractions, the significant costs arise particularly where there is a need, in the Government's view, to challenge the interpretation which the Commission takes of the quality of our implementation. I think it would be quite hard to find some other way, some less resource-intensive way of doing that. If you have got a formal challenge that you wish to pursue and it has to go to the European Court, it will take a certain amount of resource. I think one is pretty much stuck with that. On the point about resourcing generally and the pressures that the Department faces—there is one particular Directive in this Report which is mentioned in that context and that is the Animal By-Products Directive where I think there were some particular circumstances in the Department at the time. This was partly the run-on from foot-and-mouth disease. It was partly that at that point there were a number of other competing pressures around, of which one was FMD. The answer to that is less about the total quantum of resource and more about making sure the Department has a better handle on what should be its priorities and what should not at any one time.

**Q21 Helen Goodman:** That leads on to my next question. One of the things it says in the Report is if you have a bill going through the Westminster Parliament you have a bill team, and the same group of people see through the whole piece of work. That does not seem to be happening when you are doing a European piece of legislation. I wonder if you could explain why that is?

**Mr Addison:** I am not in a position to say myself, I am afraid, whether that is the case. There is always this distinction between the negotiation and the transposition and implementation.

**Q22 Helen Goodman:** It is the impression that is being given in the Report.

**Mr Addison:** I am not sure that is right but maybe my colleague Donald Macrae could help on that.

**Mr Macrae:** Certainly where the Department has a bill then we would fully resource a bill team. It would have a finite life because the procedures in the Houses of Parliament here tend to be a lot faster than in Europe, so one of the differences in trying to have a team to see through the Directive or set of regulations is that it would face a completely

different sort of timescale and therefore there is a greater likelihood of change in personnel within that time.

**Q23 Helen Goodman:** If a person was not moving post for career development reasons would it not be sensible if the same person was working on the whole thing? Would that not also mean that the negotiations not only were informed by considerations about transposition and implementation but that those matters also fed into what the Government's position was?

**Mr Macrae:** You are absolutely right that we have to be negotiating with a view to transposition so we need to be sure that we understand how we are going to implement this as we are negotiating. The answer to that, in my experience, is more to use proper project management techniques rather than assuming we will have the same people throughout. I have had experience in various instances where it has been dangerous having somebody implement something that they drafted because you find that they are implementing what they intended to draft as opposed to implementing what is there. I found that with people negotiating treaties as well. They tend to re-fight the battles they lost in negotiation. That is why I prefer to look at proper project management techniques to ensure a more objective approach, but you are certainly right we need to be better at understanding the end result as we are negotiating the starting point.

**Q24 Helen Goodman:** Okay. I have a lot of farmers in my constituency so I wish to ask you particularly about some of the Directives which have impacted on them because one of the major problems that they bring to me is dealing with Defra in its many different forms and the bureaucracy which they face. If we just look at the Animal By-Products Directive I wonder if you would like to comment on Paragraph 1.14 in the NAO Report which says that there was confusion amongst the farming community as to new rules on the burial of dead animals and how they should meet these new requirements. One of the points you made, if I could just elaborate for a second, in answer to an earlier question was the industry knew very well what the issues were, but of course the farming community is a lot of self employed people all over the country. It is not like dealing with ICI or something like that. I wonder if you could comment on this.

**Mr Addison:** I understand the point. I think with the farming industry it is particularly difficult because you have 100,000-plus people to communicate with and the representative bodies that would normally be directly engaged in discussions on new regulations, of whatever sort, cannot themselves hope to adequately cover all of those individuals and therefore that does put a special onus, I accept, on the Department to make sure that these messages get out. I do not think we have been good enough at that in the past. This particular regulation was a very complicated one to introduce and it involves some fundamental changes to existing practice on the farms, as you know, and the new arrangements for

the collection of fallen stock were gearing up at the time, so in addition to the uncertainty about what the regulations might mean or what the Regulation might mean, the practical arrangements for collecting up fallen stock took some time to get up to their current level. At the moment we think they are progressing reasonably well but we are now a year on from the introduction. So I accept there were difficulties. We did seek at the time, and would certainly seek now, to ensure that the messages get through to individual farmers on the ground. One of the things that we are trying to do more effectively in Defra in relation to farmers is to have better information and consistent information about who they are and where they are and what their addresses are, in order to make sure that our arrangements for getting in touch with them are better than they have been in the past. That sounds simple—well, I am not sure if it does sound that simple but it is actually a quite complicated thing to get right.

**Q25 Helen Goodman:** I know it is because I hear the other side of the story. I want to ask you another point. This is coming back to the gold-plating issue in Paragraph 2.18, the same Animal By-Products Directive, to ask why the Department tacked on to the Directive additional record keeping for UK farmers. It is quite clear that this is adding to the costs of British farmers, it is reducing their competitiveness, and yet at the same time you do not seem to be advising Ministers to have any rules with respect to imports which would mean that imports had to meet the same hurdles as British farmers. I wonder if you would like to comment on that as well.

**Mr Addison:** On this particular provision I will ask my colleague Donald Macrae to say something in a minute. This is an example—and I think the Report very fairly sets this out—where the Department felt that clarification and making something explicit that may have been implicit was the sensible step to take. There are one or two other examples in the Report. We would not accept and the Government would not take a view that this amounted to gold-plating in the sense that you mentioned.

**Q26 Helen Goodman:** But it does add to farmers' costs, does it not?

**Mr Addison:** I think it is important to look at that in the context of the objective of the instrument as a whole. It is certainly not our policy to introduce administrative overheads, as I explained earlier, unless they are important to the achievement of the outcome that we are trying to procure. Perhaps I could ask my colleague to add to that.

**Mr Macrae:** In terms of what we did to our farmers, the reason, as is set out in the Report, was in order to make the monitoring of compliance more practicable. As regards not imposing it on imports, I would probably have advised the Department against that under Community law rules. We can do things to our own people that we are constrained from doing under restrictions on trade in Europe.

**Helen Goodman:** Thank you.

**Chairman:** Thank you very much. Greg Clark?

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**Q27 Greg Clark:** Mr Addison, the recommendation of the Bellis Report is referred to in Paragraph 2.19 of the NAO Report and the recommendation of that report is that copy-out should be the preferred method of transposition. The Government in response to that said elaboration should be avoided. What percentage of Directives in your Department use the copy-out method?

**Mr Addison:** I will ask my colleague to correct me if I get this wrong, but my recollection is from this Report that three used the copy-out approach and five of the eight case studies used the elaboration approach.

**Q28 Greg Clark:** Would you say the sample they have taken is representative of the business of your Department in that respect?

**Mr Addison:** Again perhaps I could ask Donald to say a word a moment. I would just say that in relation to Bellis, the policy on copy-out and elaboration that we follow is set out in Cabinet Office guidance. It is very consistent with the conclusions of Bellis and argues that each case needs to be looked at on its merits and if a case for elaboration can be made then elaboration should be the course that is pursued. That is certainly the policy that we pursue in the Department. We look at each one case-by-case. As to whether the ratio of the eight in terms of copy-out and elaboration in this Report is representative of the whole, perhaps I could ask Donald to comment.

**Mr Macrae:** I do not think it would be possible to give an answer to that question because, as Mr Addison said, we take it on a case-by-case basis, and even within one Directive it may be part copy-out and part elaboration. It is not that we have a decision at the start of each Directive that there will be one technique that is used. We will probably find that it is not possible to come up with a ratio. We note the Cabinet Office guidance but still deal with each case on its merits and that can involve dealing with different parts of the Directive on its merits.

**Q29 Greg Clark:** The Government commissioned a report from Mr Bellis, accepted its conclusions, and reflected it in Cabinet Office guidance and the conclusions that were accepted were that copy-out should be the preferred method and elaboration should be avoided. Should there not be some organisational link that makes that very clear recommendation reflected in practice, whereas what we seem to have is a situation, from this small sample, that only three out of the seven have been copied out despite the fact this is the preferred method of transposition?

**Mr Macrae:** It is the preferred method but even then the number of times the preferred method may give way to a decision to elaborate on some provisions would still come back to dealing with it on a case-by-case basis.

**Q30 Greg Clark:** Nevertheless, the Government's response is that elaboration should be avoided, so did Bellis come to the wrong conclusion? Are you

saying the results of the Bellis Report accepted by the Government have proved to be impracticable? Is that your experience?

**Mr Addison:** Perhaps I could help here by just reading out the actual sentence in the Cabinet Office guidance, which is not quite that elaboration should be avoided. Paragraph 3.13 reads: "The general presumption should be not to elaborate Directives. Transposition should mirror as closely as possible the original wording of the Directive, except where there is a clear justification for doing otherwise, having regard to the impact on business and the fit of the legislation in its domestic context." The way we are reading this is we start from the point that we would go for copy-out but if there is a reason why not looked at case-by-case then we will do something different. In other words, we will elaborate to make things clearer for the businesses that are going to be affected.

**Q31 Greg Clark:** As I understand it, the purpose of the Bellis Report was to look at the practice and see whether it needed to be changed. It gave a sturdy nudge in favour of copy-out. Are you able to say whether the proportion of Directives that are copied out rather than using the elaboration method has shifted in the direction that Bellis recommended?

**Mr Macrae:** I do not know that it has shifted necessarily because there was a widespread use of copy-out before, so again as an exact answer to your question I think it would be very difficult to say that we had changed the approach that we had taken. In the main, copy-out has tended to be the way these Directives have been implemented. So I do not think there is any great difference in practice between what the Bellis Report was recommending and what we tended to do in the past and what we tend to do now. It may be that in my first answer to your question I was being too precise in saying that if there was any elaboration in the Directive that was otherwise copied out, we were not following copy-out. For example, if you have a derogation in the Directive then you have to elaborate, you cannot copy out the derogation. You have to make provision for whatever the derogation is. If you are allowed to do it in a different way in your Member State you cannot copy it out.

**Chairman:** I will have to stop you there, I am afraid, because there is a division.

*The Committee suspended from 16.01 to 16.11 for a division in the House.*

**Chairman:** Greg Clark?

**Q32 Greg Clark:** Thank you very much, Chairman. We were discussing the Bellis Report. My point really is, Mr Addison, has the publication of the Report and its acceptance by the Government changed practice at all in your Department?

**Mr Addison:** I think the honest answer to that is not much because the policy that we are pursuing, as Donald Macrae has been explaining, is very consistent in any event with the Cabinet Office guidance. Cabinet Office guidance has to be the essential guidance we follow. Can I make one other point very briefly and that is the Report itself

reinforces the point that Donald Macrae has just been making, that three, as I said, of the seven case studies here that have been transposed (and one of course has not been transposed) used copy-out and the other four used a mixture of the two. In other words, it is not really an either/or and the Report concludes that it is copy-out but it is also a mixture of the two, and the remaining transpositions were mixtures of the two.

**Q33 Greg Clark:** As far as Bellis goes it has not changed practice?

**Mr Addison:** That is my conclusion, that we are pursuing Cabinet Office guidance.

**Q34 Greg Clark:** One of the reasons for elaboration is to clarify concepts that are not clear in the original Directive. My feeling on that is that there should perhaps be greater effort to ensure that they are clear before they come to Member States for transposition. Another conclusion of the Bellis Report, perhaps I can quote from it, says that: "During negotiations on the Commission's proposal for a Directive the UK is often represented by a junior officer with no legal training or experience who attends meetings in Brussels without support, in particular without full-time legal support." Does that accord with your experience?

**Mr Addison:** I am afraid my personal experience is neither here nor there in this context because I have not had enough direct knowledge of it myself. I will ask Donald Macrae to say something in a moment. I would just like to point out that partly as a result of the Better Regulation Task Force in the Department and partly because it was something we were conscious of anyway, we take very seriously the negotiation stage in Europe and, if anything, we are putting more effort into that point, and even the pre-proposal stage, in order to get the final outcome right, with the full benefit of legal advice. The NAO Report mentions the importance of getting early legal advice. It is a recommendation that we take seriously and we are already seeking to pursue that, as the Report gives some credit for, I think. I would not recognise the general picture that is described there as the current one. Whether it was the case in the past for us I am afraid I cannot comment on, but we certainly take the messages seriously and are working on them.

**Mr Macrae:** I think the answer is that the practice varies quite a bit from department to department. Mr Bellis was in the Department for Transport for all of his career. In both the former Environment Department and in MAFF there was a huge emphasis on Community law because that was such a central part of what these departments did and, generally speaking, the teams that were fielded to do the negotiations tended to be stronger and more specialised. It may be the case that on some occasions there might have been only one or two people in the negotiating chamber but certainly in the case of Defra they would have had good links to somebody back at base, so that whatever they would be doing in the negotiating chamber there would be a team backing them up. There is a limit to how many

people we would send out on a delegation, so I would rather not get too caught up in the actual numbers and be more concerned with the expertise in the Department.

**Q35 Greg Clark:** Mr Addison, as former director of the Better Regulation Unit in the Cabinet Office you would be concerned to hear that practice is entirely down to different departments and Defra, we hear, is better than the Department for Transport. That must concern you as a career civil servant who has worked in different departments?

**Mr Addison:** I think Donald was referring to the past rather than the present, at least I hope he was. I think you are right, one of the purposes of the Better Regulation Executive, as it now is, is promoting better practice around Whitehall as a whole. I think the quality of the guidance that they produce and its value to us has improved. I do not know what part I played in that some time ago but I hope it was some kind of part.

**Q36 Greg Clark:** But in this particular respect concerning the recommendation about quality of advice and support in Brussels; has the practice improved in response to the Bellis Report, in your view?

**Mr Addison:** Whether it is in response to the Bellis Report specifically or not I cannot say, but I can certainly say those are points that we take very seriously, and more seriously perhaps than we used to. The NAO Report mentions a number of other areas where we involve the Environment Agency earlier, including as back-up in Europe and we want to make sure that we fulfil our negotiating role in Europe as effectively as we can with the right kind of advice and at the right level. We take that very seriously.

**Chairman:** Richard Bacon?

**Q37 Mr Bacon:** Chairman, the Cabinet Office guidance says that the involvement of lawyers from an early stage can help, as Mr Macrae says. Generally speaking—and I know that Figure 10, on Page 22 gives an example of where the early involvement of lawyers was successful and useful—do you think it is fair to say lawyers are not involved as early in the process as they could be and it would be generally useful if they were involved earlier?

**Mr Macrae:** I think that over the last few years lawyers have been increasingly involved at a very early stage and I think it is fair to say now that lawyers are seen as an integral part of the multi-disciplinary policy team. I think we have got to the stage that we are in at the start and we are contributing at the start with the expertise that we have from being involved in negotiations, transposition and casework afterwards.

**Q38 Mr Bacon:** I understood you to say in answer to Miss Goodman about pigs, a subject about which I have great interest in my constituency, that you did what you did to the British farmers because you could but you did not do what you did not do to

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importers because you could not? Is that an accurate, if not a complete, summary of what you said?

**Mr Macrae:** It is a concise summary. We felt that it was important for effective implementation to have the regime that we set up, which did involve going beyond what was in the Directive. It is a general constraint of Community law that trying to impose additional constraints which could be construed as a barrier on trade are things that we may have difficulty doing.

**Q39 Mr Bacon:** You are the regulation champion in the Department. Precisely what does that mean? Does it mean you stand there with a cheerleader's flag waving a sign saying "regulation". Does it mean that you are looking for less regulation, better regulation? What is your brief as regulation champion?

**Mr Macrae:** As regulation champion what I am trying to do is to promote specifically the Better Regulation agenda but also to try to ensure that we have more effective regulation. Regulation is one of the chief policy tools that we have in a department such as Defra in terms of trying to deliver the outcomes that we are there to achieve. In doing so, we pay full attention to the Better Regulation agenda but we also go beyond that agenda in terms of looking at the effectiveness of the regulations that we produce. It is a role that I take very seriously and I am involved in the Ministerial Challenge Panel on regulation that we have, which is one way that we are trying to drive a change in the culture. I am also using the legal team to act more as challengers. This comes back to your earlier point about involvement of the lawyers. They say that it takes a lawyer to draft bad regulation. That also means that if you train the lawyers then they can act as gatekeepers against bad regulation, and that is the approach we take in Defra. I am using my position both as legal adviser and regulation champion to work on the nuts and bolts of transposition and implementation to deliver the Better Regulation agenda.

**Q40 Mr Bacon:** I think it was Mr Addison who said earlier—and I wrote it down—"we try very hard to get clarity". I think that was in relation to the fridge issue, the Waste Management Directive. I suppose this is a question for Mr Macrae, although it would be helpful to have either of your views: is it that there is an inherent problem? It is referred to in the Bellis Report on the problems of the English system. The English legal mind is always looking for clarity and the Continental legal mind has no interest whatsoever in clarity. It wants it precisely to be as vague as it can be.

**Mr Addison:** Maybe I could comment on one aspect of that and then ask my colleague Donald Macrae to do so. From the Department's point of view, clarity matters in terms of the achievement of the regulatory outcome that we are aiming for. In other words, what we are trying to secure is a particular sort of behaviour or to stop a particular sort of behaviour and clarity matters to the extent that it supports that objective. When we are in the process of transposing

a Directive we think about what we are trying to achieve and what the end result of the regulation should be and make sure we provide the clarity that is required to support that. At least that is the principle that we need to be working to. I am not saying that we get it right in every case but that is the direction we are trying to head in. Clarity is not an end in itself. Clarity is about achieving the objective we are trying to achieve. That is why it matters.

**Q41 Mr Bacon:** I am saying is it not the case that others, particularly with a codified legal system, see clarity as a threat? Let me read you a quote from an article concerning the transposition of Directives. It happens to be about financial services but the point is the same. Mr Macrae, perhaps you could comment. "There was a good deal of tension between the departmental lawyers, who were looking at the words and the civil servants, who wanted to achieve a practicable solution. Luckily, as well as being badly drafted it had been badly translated so we were able to exploit discrepancies between the different language texts." Does that sound familiar to you? Is that the sort of experience you would encounter in your work?

**Mr Macrae:** It does not sound familiar. There is some truth in the general distinction you are drawing there, speaking both as an English lawyer and Scots lawyer qualified on both sides of the border, and therefore having an understanding of Continental systems through Scots law. There is certainly much greater stress in the English legal tradition on certainty, on precedent, on being able to argue for a loophole in the law than you find in Continental systems, which are based more on principle, flexibility and where more things are left open, as you say, to be decided by the courts. There is still a need for clarity whether it is in the UK or any other Member State. In so far as there is ambiguity in the Directive, it does not necessarily come from a different legal system, it very often comes from the nature of negotiating across a wide ranges of interests.

**Q42 Mr Bacon:** Mr Addison, since you are the accounting officer if you are the "acting" Permanent Secretary, then you are responsible for safeguarding the Department's money. Since the *Francovich* case there has been an exposure by the Department to actions for damages by individuals, if the actions of we, the Member State, in failing to transpose a Directive cause damage to individuals. Have you or has the Department suffered as a result of that doctrine of direct effect through successful actions?

**Mr Addison:** Not as far as I am aware. Donald Macrae is shaking his head so that is a no.

**Q43 Mr Bacon:** Has the existence of that legal doctrine acted as a significant incentive for you to transpose on time or is it not something that you have not taken much notice of?

**Mr Addison:** No, I think the gist of this report and my knowledge of the way the Department works confirm that we take transposition deadlines seriously and that is what we are required to do by

the over-arching policy as set out, once again, in that Cabinet Office document. Timely transposition is an objective so we take it seriously, and one of the reasons I am sure we take it seriously is because of the Francovich possibility but we take it seriously because it is a legal obligation.

**Q44 Mr Bacon:** Could you turn to Page 24. In Case Study Six it refers to delay by the Council in publishing detailed criteria for what are called WAC limit values but it points out that even after the council had, albeit belatedly, published these values the Department did not put out a consultation until December 2003, nine months afterwards. Why is that sort delay permitted if you have got, I think you called, it a programme management approach in place to make sure that things are done on time?

**Mr Addison:** I might ask my colleague Sue to comment on the specifics but just in terms of the point about how can these things happen if we adopt a sensible project, management approach to life, the introduction of programme and project management is not that recent but it has been growing in the Department over the last two or three years, I guess, so the extent to which we could really say that programme and project management is now making a significant difference to the way we go about regulating, I would be happy to say that it certainly has now. Looking back a couple of years, I think the position would be more patchy. I do not think that is a fair test, if you like, of the extent to which programme and project management is going to be successful for us in tackling some of these issues. We have taken that very seriously and we have every confidence that it will improve the way we go about regulation and the timetables, but it will not solve all the problems.

**Q45 Mr Bacon:** Do you have any idea of the cost to the Department of infraction proceedings or infringement proceedings that are brought against you?

**Mr Addison:** I cannot give you a figure but we have had no fines as yet. The Report actually makes that clear. The UK has not been fined as a result of infraction.

**Q46 Mr Bacon:** Unlike other Member States?

**Mr Addison:** Some Member States have but it is pretty rare.

**Q47 Mr Bacon:** They do not pay them anyway, do they?

**Mr Addison:** I do not know the answer to that, I am afraid. It is rare but it has happened. However, it has not happened in the case of the UK and it certainly has not happened in the case of Defra responsibility.

**Q48 Mr Bacon:** Is it possible that we could get from the NAO a little note on those countries that have actually had fines since the process of infringement proceedings started, and a history of that fine, what happened to it and whether it ever got paid in full?

**Mr Burr:** We will see what we can do.<sup>1</sup>

**Mr Bacon:** Thank you very much.

**Chairman:** Thank you, Mr Bacon. Angela Browning?

**Q49 Angela Browning:** Could I add a codicil to that request from Mr Bacon. For example, immediately to my mind came the case of Italian milk quotas where they were fined, failed to pay it, and in the end got a most enormous discount negotiated, which rather gave an incentive to everybody else to do the same. It would be very interesting to see how commonplace that is now.<sup>2</sup> That particular case was a little while ago. Mr Addison, could I bring you back to this question of copy-out and elaboration. I would like to probe a few more points on this. Copy-out at the end of the day leaves a much more loosely drafted piece of legislation which ultimately the courts are left to determine. I just wonder whether in what I would regard as a bit of a “pick-and-mix” option which the Cabinet Office gives you here in being able to go for one or both or a mixture, in terms of meeting deadlines for compliance, whether copy-out is quite a nice option for you which allows you to meet the 1.5% target? Does that occur?

**Mr Addison:** I am not aware of any cases where we have decided on the grounds of timeliness alone, if you like, to go for one option or the other. I may well be corrected by my colleague and I will turn to him in a moment. In terms of the general approach, it is true that the more you simply import the Directive lock, stock and barrel, in one sense, the simpler the process and the easier it is to comply with the timescale. That is one of the reasons why we need to look at every case on its merits. There may well be some significant disadvantages to the regulatory purpose that we are seeking to achieve and the industry’s reception of the regulation if we do that, so the balance needs to be struck in every case, which is why, as Donald Macrae was saying, we need to look at each one very carefully and strike that balance correctly, as I think the Report sensibly argues. Striking a balance is at the heart of the implementation challenge.

**Q50 Angela Browning:** I think you are already implying that testing legislation in court is not for the faint hearted, is it? It is usually only able to be done by large organisations or the corporate sector. It is not something that small businesses, for example, are able to challenge in any way?

**Mr Addison:** It can be an expensive option.

**Q51 Angela Browning:** So you have to seek this balance between meeting your targets of timeliness and also getting a balance between not gold-plating but making sure that you regulate in a way that is good regulation. I understand from what you have said today that that is what you seek to do. Can I ask you then when you come to elaboration, what in practice is put on a minister’s desk, when they are asked to sign off regulation in order for the Minister to be quite happy, that there is no gold-plating?

<sup>1</sup> Ev 16–17

<sup>2</sup> Ev 18

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What tangibly do you put in front of a Minister to demonstrate that you have absolutely minimised gold-plating?

**Mr Addison:** Maybe Sue Ellis my colleague can help with that because she has been through the mill on a number of these cases. I think the Report's content and the Department's record make clear that however we actually couch this, it is a point that we do take seriously and ministers would only be advised to go beyond a Directive (in the sense that gold-plating means that you introduce more requirements than are in the Directive) if that complies with the guidance that we have, which is that the benefits have to exceed the costs. We would take that requirement pretty seriously. Perhaps Sue can give us some examples, if that is what you would like, about how this works.

**Ms Ellis:** Ministers are usually given a set of draft final regulations. They also have the completed regulatory impact assessment. They would normally also have in their pack a description of the issues that were raised during consultation on the draft regulations and how that had changed the final version of the regulations. We would normally draw to their attention other issues that may have developed whilst the consultation was taking place or subsequent to that, and invariably we are asked by ministers what the practice is in other Member States and exactly what they are doing. There would be normally something in the covering submission on practice elsewhere. By those methods we highlight to ministers where there may be elements of gold-plating. As my colleagues have already explained, we are under strong pressure not to gold-plate and not to put extra provisions in. So it would be very rare for that to occur.

**Q52 Angela Browning:** So a minister in signing off does not actually have a detailed analysis of where you have gone beyond the Directive, for whatever reason? Occasionally there may be a good reason to go beyond it (but I would hope not too many) but the minister signs off without having that analysis in front of him or her?

**Ms Ellis:** In my experience we have not actually gold-plated the provisions of Directives so we have not had occasion to have to highlight that to Ministers.

**Q53 Angela Browning:** Does that mean ministers have not asked for it or do the ministers take it in good faith that there is no gold-plating when they sign off?

**Mr Addison:** If I could just comment on that. I think ministers would rightly expect in a submission about the implementation of the Directive, if it were to involve going beyond the terms of the Directive in terms of gold-plating, to be advised that that was the case, and the Department I would expect would do that.

**Q54 Angela Browning:** Right. Could I bring you on to a point Ms Ellis has just raised and that is what goes on in other Member States. We know from examples that there are differences in the way

different states think about legislation, and although it is euphemistically called the "Single Market", we all know in practice, particularly in the areas covered by your Department, and particularly in the agricultural sector where trade of agricultural products is a very important part, that it is not a Single Market; we are as much in competition with the French and Germans and Italians within the Single Market, and so that is very important to us. If I just look on page 13 at graph number 5, you look as though you are doing extraordinarily well. I look at Germany who apparently are making a bigger effort, but when I look at countries like Greece and France there are long blue lines there on that bar chart and yet the UK is doing incredibly well. It seems almost astonishing to me that in Greece or France they would actually be having a sort of session such as this where they are asking ministers to get on and do these things. What I am asking you is do you take into account in the process of implementation of these Directives the disparities between the way other EU countries are doing it from the point of view of UK competitiveness within the EU.

**Mr Addison:** For some specific examples I am going to turn to colleagues on my left and right in a moment, if they have any. I think I should make clear that the policy that we follow and the policy that we are required to follow is set out in the guidance that we have talked about and looked at specifically today. That has no provision for looking aside at other Member States to see how far back they may be. The guidance stands in its own right and the legal obligations in terms of implementation stand in their own right and those are the ones we pursue. The league table does move around a bit. If you look at the most recent table that we sent out, France, even allowing for the fact that there are new Member States, has come well off the bottom. It is not in the top league but it has come well off the bottom. So the numbers do move around a little bit. The UK's position, as I have said, has been stable. We are one of the best but not the best in terms of meeting the timeliness target. Even so, as has been pointed out already, the truth is that we do not implement on time a considerable number of the Directives that fall to be transposed.

**Q55 Angela Browning:** Is that because things like consulting on regulatory impact assessments and that type of process (which is part of the way we legislate here) sometimes delay implementation? Is that the causal effect of the late notice that is given to people when you are about to implement a Directive, as we have seen from the examples in this Report, so there is really very little lead time for the organisational industries involved to appropriately be able to respond in the timeframe you set?

**Mr Addison:** If I may say so, I think that is a bit of a generalisation in the sense that in many cases we manage to give the industries and businesses a sensible amount of time to take the necessary steps. We do that by informal consultation as much as by the issue of formal guidance. There are a number of reasons why it is hard quite often to hit the deadline

for transposition. One rather obvious reason is that in some cases the Directive gives the Member State a very short time to implement, and one of those is mentioned here; I think it was Emissions Trading Directive. The second, and this is more particularly a UK matter, is that we can only say properly that the UK has transposed fully if each individual part of the UK has transposed fully. That includes England, Scotland, Wales, Northern Ireland and in some cases Gibraltar. The way that process works, and the pressures in particular on some of those legislatures, inevitably delays things. Those are all reasons why it can be quite challenging to hit timeliness deadlines. We think with the stronger programme and project management approach we have, and clocking these issues at the outset rather than stumbling across them further down the track, is a way of improving our record in terms of time limits.

**Q56 Angela Browning:** My time is up but if I could ask one quick question to save me coming back at the end. If you do not know the answer I would be pleased perhaps if you would write to us. In the final stages of negotiating these regulations, and most of the are subject to qualified majority voting, one of the things that can sometimes happen, and in fact I think happens quite a lot, is that in order to get some form of agreement there are derogations issued, and certainly in terms of the timescale of implementation, it is very often an option that Member States can take up. Can you tell us how often the UK Government takes advantage of that derogated time on implementation in comparison with other Member States as far as your Department is concerned?

**Mr Addison:** Perhaps I could ask my colleague Donald Macrae to answer.

**Mr Macrae:** We would normally take advantage of derogations.

**Q57 Angela Browning:** In every case?

**Mr Macrae:** Normally. I cannot say in every case. There may be some exceptions but if we negotiated the derogation we would want to use it.

**Q58 Angela Browning:** I am not just saying if we negotiated it but if there was one available at the time that the Directive is finalised which Member States can opt into if they wish, that is what I am looking for, to find out how often we have adopted that derogation just to give us that bit more lead time?

**Mr Addison:** There is an example in the Report where we had an option of bringing in the waste acceptance criteria on one date, either July 2004 or July 2005, and we went for the later one. The answer to your general question about the frequency with which we do it I am afraid I cannot say but, as I say, there is one example where we did that in the Report.

**Chairman:** Thank you, Mrs Browning. Ian Davidson?

**Q59 Mr Davidson:** Can I ask about the relationship between yourselves and the devolved administrations. As I understand it, the UK Government is liable for any penalties that apply, yet the devolved administrations are responsible for actually implementing things. I am not quite clear exactly how that relationship works. You could quite easily have a situation where people are reinventing the wheel. To what extent has that been avoided?

**Mr Addison:** First of all, on the first specific point about fines, my understanding is a little different to yours, and no doubt Donald Macrae will be able to correct me if I get this wrong. In the event there were successful infraction proceedings mounted by the Commission and the UK was fined, it would fall to that particular administration which had not implemented or transposed it effectively and properly.

**Q60 Mr Davidson:** So the fine would be levied against the UK but it would then be passed on?

**Mr Addison:** I am not sure which body would be the first port of call by the Commission but certainly under the terms of the Concordat, as I understand it, the cost would fall to the jurisdiction that had not implemented it correctly.

**Q61 Mr Davidson:** That is slightly more reassuring!

**Mr Addison:** On the point about how we manage this, the Report here does make clear that one of the big difficulties that the UK has in terms of the challenge we have in terms of implementation is the fact there are a number of jurisdictions to cover in one go. Your point about doing this in sequence is a very important one because one of the standard ways of going about transposition is for the devolved administrations to wait until they see how Defra in England are doing it and then to use that to progress the legislation in their own jurisdictions. Whilst that is very sensible from the point of view of ironing out the bugs and making sure that some of the issues are clarified so they can move more quickly at that point, it does have the disadvantage that the thing is being done sequentially rather than in parallel. It is particularly difficult for Wales because the procedures that have to be gone through in terms of the Welsh Parliament and the need to translate the instruments into Welsh obviously adds a bit more time again. Gibraltar is another matter where the pressures on their legislative capacity are obviously huge because it is a tiny state.

**Q62 Mr Davidson:** Particularly in relation to agriculture, the applicability of Regulations is a point as well because there are not all that many sheep and cattle, to my understanding, in Gibraltar! Leaving that aside, presumably it means the devolved regimes have no involvement in the negotiations that will take place internally about how these things are translated and that they are then having to work with a document which has not been drawn up with their interests in mind. Presumably there is always going to be a degree of

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flexibility as to how you interpret what is being put forward by Europe. Is that a fair way of looking at it?

**Mr Addison:** In practice we would want to work and we seek to work very closely with the devolved administrations throughout the process because we are very conscious of the fact that it is not very helpful to throw a Directive at them to implement if they have had no engagement with the process to that point. The Report once again says this but in fact our relationships with the devolved administrations are quite close and we have worked to strengthen them given that we have identified that this is a particular challenge for us. We work increasingly closely with them. In particular, we identify at the outset at the proposal stage if possible, in other words well before the issue is concluded, that there will be a devolved administration interest and build them into the process.

**Q63 Mr Davidson:** That is the second point I wanted to pick up. One of the things that I find a bit confusing is the way in which there are issues of misinterpretation and so on and so forth. If Britain has been involved right from the very beginning on some of these legislative proposals, I cannot quite understand why these areas of clarity have not been resolved before it gets to stage of implementation.

**Mr Addison:** We do work increasingly closely with the Commission and other Member States to sort out these problems during the negotiation phase. The Report gives us credit for that and says we are moving in the right direction. I guess the truth is there will always be some uncertainties and ambiguities in any legal instrument signed up to by 25 Member States that then had to be clarified subsequently and sorted out. I think the key thing from our point of view would be to make sure that we take the devolved administrations along with us so we share the degree of clarity or lack of it at every point.

**Q64 Mr Davidson:** Coming back to the point Mrs Browning made about qualified majority voting, how many of these proposals that are put forward are subject to qualified majority voting?

**Mr Addison:** I believe the vast majority are subject to qualified majority voting.

**Q65 Mr Davidson:** Have we been blocking or seeking to block some of these proposals because of a lack of clarity or have been just willing to accept in the spirit of good Europeans things about which we are uncertain?

**Mr Addison:** Perhaps I could ask Donald Macrae to comment but I would just say before he does that in any negotiations with, now, 25 Member States you have to choose your ground and you have to identify what the priorities are for you in negotiations. In terms of the timeliness point, although it would be important to the UK to get a sensible timetable for transposition it may be more important to get something else because transposition is an issue which will last for however long that period is but the

content of the instrument will last very much longer, so it may be more sensible to use your negotiating ammunition to secure a sensible result rather than—

**Q66 Mr Davidson:** This is the mythical concept of influence about which we have never had any quantifiable or identifiable measuring instruments devised?

**Mr Addison:** We like to think that on occasions we are quite successful in getting sensible results despite the fact we are one of 25. Perhaps Donald Macrae could comment on your particular question which is about how can we make sure we do better at clarifying instruments as they go through.

**Mr Macrae:** We do want to try and get as much clarity as we can but sometimes, as Mr Addison says, it depends what our priorities are for using our negotiating capital. The misinterpretation problems do not always arise out of negotiation. Sometimes they just arise out of life. One of the biggest problems we have had is on the definition of “waste”. Waste is fundamental to an awful lot of the regulations we deal with and problems arise in practice in trying to decide whether something constitutes waste or not. That is not something that really we could have foreseen when we were doing negotiations just because of the sheer variety of products and situations that have arisen since these various Waste Directives were being negotiated. It is a problem right across the whole Community and it is another illustration of how we will always have problems of interpretation, no matter how hard we try and clarify it during the process.

**Q67 Mr Davidson:** Can I pick up a slightly different point and that is the question of lawyers as heroes rather than as villains. I find this in a sense a difficult concept to grasp, I must confess, since you are one of the few departments that have come forward and argued that we ought to have more lawyers involved in this process. Can I clarify whether or not you think you have managed to achieve some sort of culture change in the way in which lawyers approach these issues? I came from a local authority background where lawyers are always there to stop you doing things in ever more ingenious ways. If you have managed to find a cultural change, that is immensely useful and obviously can be employed elsewhere. Have you done that and, if so, what is the secret?

**Mr Addison:** This is Donald Macrae’s territory and he can take quite a bit of the credit for this. I would just say from the perspective of a bit of an observer I think that the relationships between the legal team in Defra and the policy teams are very close. They are about working together towards a common purpose in partnership. Of course there are occasional issues between them but I certainly do not have a sense that the Department in general view the lawyers as an obstacle, rather they view them as a support in the process, and a crucial one at that.

**Mr Macrae:** I would say—perhaps I should not—there has been a culture change. Certainly you can see it, say, over a ten-year period. The role of the government lawyers has moved very markedly from

a very narrow one of being guardians of the constitution to one where most of the young lawyers in the Government Legal Service are attracted to the Government Legal Service because they want to be involved in policy. They want to be involved in trying to deliver the outcomes that the Government is trying to achieve and law is increasingly seen by them as a policy tool, as a way of being able to achieve results as opposed to a constraint on innovation. We have some very innovative lawyers. We have always been good at risk analysis. The real trick has been to stop being risk averse so we can now be fairly adventurous in our analysis and our suggestions.

**Q68 Chairman:** Just following up this devolution point, if you look at Page 43 you will see on Paragraph 4.22: "It is possible for all partners in the UK to work together and produce one single piece of transposing legislation . . . However, on all our other case studies the UK produced more than one Statutory Instrument to transpose the European requirements into national legislation. Since devolution, legislation at UK level in areas of devolved competence is rare . . ." Why is that? Why do you not just work together with the devolved administrations to produce one set of transposing legislation?

**Mr Addison:** Let me answer that initially, if I may. As the Report says, there has been at least one other case study where we did exactly that. We have another case at the moment where we may be able to do the same. In the end, if the devolved administrations have their own legislation and the policy issue is a devolved matter, it will be for them to decide essentially how they wish to go about transposition. I think that flows inevitably from the concordats we have with them and it is a perfectly proper approach. Where we can agree a different approach, where we can agree with them that it makes sense to do things in one go, then of course we will do that but this has to be an agreed position rather than an imposed one.

**Q69 Mr Bacon:** Can you just confirm that following: the Code of Practice for the Welfare of Pigs requires British farmers to endure burdens that are higher than for pig farmers in other Member States? Is that correct; does it go beyond what is required in other Member States?

**Mr Macrae:** I honestly cannot answer that, I do not know.

**Q70 Mr Bacon:** You do not know. Mr Addison, do you know? Does the Farming Code of Practice for the Welfare of Pigs require a pig farmer here to go in terms of their management of the animal beyond what is required in other Member States? It is a yes or a no.

**Mr Addison:** Two points, if I may, in response to that. One is that without knowing what other Member States' requirements are I think it is very difficult answer that question. If the question is more about—

**Q71 Mr Bacon:** I have loads of pig farmers in my constituency who have been telling me for five years that the answer is yes it does require them to go beyond. Are you saying none of you knows? Does anybody at the back know about pigs? My colleague used to be a MAFF minister when it was MAFF so perhaps I can ask her, but I was hoping that one of the witnesses would be able to help me.

**Mr Addison:** Perhaps I could give you the second bit of my answer and then ask my colleagues behind if they wish to comment. The first thing is about what other Member States do, which I cannot give you information on, and the second is what are the requirements in relation to the Code. The Code is guidance. There are regulations, or at least I think it is a regulation because it is pig welfare regulation.

**Q72 Mr Bacon:** I am referring to Page 26, Case Example 8, where it says: "This code is a national initiative and is not a requirement of the Directives." That is really what I am referring to.

**Mr Addison:** And the Code is guidance, the Code is guidance. The law, as in the Regulations, can be enforced, whereas the Code is guidance. Now, the Code that the Department revised, took the opportunity of revising because it already existed when the Regulations came in, offers guidance which in the end is for individual farmers to decide whether or not they wish to follow. The key thing is to comply with the law as it is set out in the Regulations.

**Q73 Mr Bacon:** Yes, I understand that once the Regulations have been set out and have been transposed into law, they must be followed, but that still does not answer my question. Must they go further than the requirements of other Member States? You said there was somebody behind who was waving, Chairman. Is there somebody who can answer this question? I just find it extraordinary because it is such a common problem that is raised whenever I visit a pig farmer. Apart from poultry, pig farming is probably one of the biggest agricultural sectors in my constituency and there is nobody here who seems to have come across this or is able to answer the question.

**Mr Addison:** Can I have one more go at this?

**Q74 Mr Bacon:** If it is a yes or no, great.

**Mr Addison:** The content of the Code goes further than the content of the Directive and that is the case and we have accepted that. The question is, what is the status of the Code and is the guidance that it offers—

**Q75 Mr Bacon:** What are farmers legally obliged to do? That has a question mark at the end of it! Is it the same as in other Member States or are they legally obliged to do more than in other Member States?

**Mr Addison:** I cannot give you the answer to that question.

**Mr Macrae:** The reason I said first of all that I did not know was in terms of the comparison with other Member States, but I am told that in fact we do not go as far as Finland which requires—

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**Q76 Mr Bacon:** With respect, I was not asking you whether we are less bad than one other Member State. The generality is that Member States have implemented the Directive in a straightforward copycat fashion and we have gone further. That is correct, is it not?

**Mr Macrae:** The difference we have is because of the Code of Practice that we had. Now, what I am unsure of is exactly how far back that Code goes, but the Code predated the Directive, so we had a Code of Practice and that is something which we gave statutory recognition to when we were implementing the Directive, so this was a matter of voluntary regulation as opposed to statutory regulation. We had the Code and the Code was given statutory recognition which does not mean to say that the provisions of the Code themselves are then enforceable. It is something like the Highway Code where, in the event of arguing a case in court, if further behaviour fitted with the Code of Practice or not, that would be taken into account in trying to make a decision. Therefore, in technical terms the provisions of the Code are not legally binding on the farmers and, to that extent, what is legally binding on the farmers is the same as under the Directive and, therefore, should be the same as for any Member State complying with the Directive.

**Mr Bacon:** Chairman, it is unusual to ask another member of the Committee to answer the question, but in this case, perhaps I might ask Angela Browning.

**Angela Browning:** Well, it is a long time since I was a MAFF Minister, but I think one of the difficulties is that historically since we joined the EU, the UK has unilaterally put into law areas of animal welfare and husbandry which have been unique to us and not applied to the rest of the EU, for example, in the pig industry, the implementation of banning sow stalls and tethers and, for example, veal crates we banned unilaterally. Where unilaterally we have done something, that is then rolled forward, I think, into all the guidance and legislation that is still coming forward and it is true that that has commercially put the UK farmers at a disadvantage with other EU Member States, but it is enshrined in our UK law and I would just say in mitigation that, as a MAFF Minister from 1994 to 1997, I vowed never unilaterally to bring into place such legislation, it predated that, and I think that was right because it has put us at a disadvantage, but now it is there, you have to roll it forward if you bring forward guidance in the future.

**Q77 Mr Bacon:** Mr Macrae, if you would be able to send us a note with a full explanation, because it is very complicated, I would be very grateful.<sup>3</sup> I have one other question relating to paragraph 2.18 and it may be for Ms Ellis, although if it is not, please tell me, concerning the Animal By-Products Regulation. It does say there, and it is in quotes in paragraph 2.18 that, “‘additional’ record-keeping requirements were added to the Statutory Instruments in England and the devolved

administrations which were not a requirement of the European Regulation”. It goes on, “The Regulation requires Member States to ensure that the Regulation is complied with, and the Department considered that without these additional record-keeping requirements this would not be possible”. Presumably, therefore, the Department took a different view from what the French Department of Agriculture or the Spanish Department of Agriculture considered were the minimum record-keeping requirements. What were precisely these extra records that your Department considered needed to be kept?

**Mr Addison:** It is not Sue Ellis’s territory, in fairness. I think if you want detailed information on what those are, then we will have to send you a note, if we may, but this was the area that we were talking about earlier and which Donald explained. There will be cases where the UK Government takes the view, or whatever jurisdiction we are talking about takes the view, that to implement or transpose this sensibly, requirements which are implicit need to be made explicit in the Regulations and that is a view which, it seems to me, in terms of regulatory outcome the Government is perfectly entitled to take, but that would be the reason.

**Q78 Mr Bacon:** But perhaps you can confirm whether this is the case or not, that it is weighed in the balance or not at all. I think this was sort of referred to earlier, where doing so would place farmers at a competitive disadvantage if others elsewhere in the Union are not subjected to the identical regime. You do not weigh that in the balance.

**Mr Addison:** Well, certainly the costs that are drawn up in the context of the regulatory impact assessment, that is, the cost to business of the administration of the Regulation and any other costs, would need to be factored into that account and displayed in it and looked at by ministers. Whether that was done in this case at this time I am afraid I cannot tell you, but the principle would be that the regulatory impact assessment process will identify all the costs, including the administrative costs, and we have recently changed the way we do regulatory impact assessments to make clear that they do identify the administrative overhead of regulation because we are trying to cut it by 25% and all of that should be displayed clearly in the regulatory impact assessment. As I say, whether that happened in this case or not, I am afraid I cannot tell you, but that is the principle. The question you asked I think was about the general approach, but that is the principle we would follow.

**Q79 Chairman:** This Report praises programme and project management. Why is it only the pass rate, according to the Report, of one Directorate-General?

**Mr Addison:** What is compulsory in one Directorate-General is the tailored approach that they have drawn up to deal with the transposition and implementation of European Directives. Programme and project management for the

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transposition of all Directives is now a requirement across the Department, but what happens is that it is done to a different model, if you like, in the Environment Directorate-General. What we propose to do is when that arrangement has settled down and when the model that they are using to implement environmental instruments has settled down and we can review it properly, we will then consider whether that is actually the best model to roll out more widely in the Department. However, programme and project management is now a

requirement across the Department and has actually been pretty common practice in the case of all transpositions for some time, but it is actually a requirement.

**Chairman:** Okay, Mr Addison, thank you very much. It has been a very interesting hearing and when we produce our report, we will try to assist your efforts to reassure the public and business in particular that there is no gold-plating and what is gold-plated will be stripped away in the future. Thank you very much.

### Memorandum submitted by the Department for Environment, Food and Rural Affairs

#### UPDATE ON DEVELOPMENTS SINCE THE STUDY BY THE NATIONAL AUDIT OFFICE

#### RECOMMENDATIONS

##### (i) *Develop a more systematic approach to engaging stakeholders*

- The development of a stakeholder engagement strategy is an integral part of the Programme and Project Management (PPM) methodology used for policy development across the Department.
- A shared database is being developed to improve the way Defra manages its stakeholder relations and is an important part of Defra's Stakeholder Relations Programme. With secure access through the Department's internal intranet, this web-based solution allows stakeholder data to be collected and managed within business areas. The database is currently being piloted with a number of business areas and is scheduled to be rolled out across Defra shortly. Informal feedback from stakeholders to date has been positive.

The benefits of a shared stakeholder database are:

- Provides quality-assured, up to date contact details for stakeholders.
- Ensures a consistent, joined up approach to stakeholder interaction and information management across the Department.
- Building on the pre-existing methods of sharing good practice across the Department such as articles in internal publications, lunchtime seminars, workshops etc, a site on the intranet—the Good Practice Database—has been specially created to spread useful ways of working which are not yet standard practice throughout the Department.

##### (ii) *Issue timely external guidance, providing more certainty to affected parties*

- This is an area where Defra accepts improvements are still needed and is currently considering the options. Amongst the ideas under consideration is for the Small Business Service to run a series of seminars for Defra officials to highlight the importance of issuing timely guidance.
- Defra is currently taking part in a Whitehall-wide benchmarking exercise to calculate the costs of the administrative burden on businesses. Defra has pledged to reduce this burden by 25% by 2009. External guidance will be considered as part of this exercise to ensure that guidance provided by the Department is meeting the needs of our stakeholders and is not simply adding to their administrative burdens.

##### (iii) *Adapt its Programme and Project Management tools to the phases and challenges of European legislation*

- All new EU environment legislation is transposed using Programme and Project Management tools specially adapted to the legislative process. This programme will be reviewed and evaluated at the end of the year and the PPM tools will then be made available across the Department.
- A pilot project to adapt this PPM methodology for the negotiation stage of an EU proposal is due to start shortly. This was due to start earlier this year, but has been delayed as the European Commission has delayed the proposal (Waste Framework Directive revisions) to which it relates.
- PPM is now the standard approach for developing regulatory proposals across the Department.

- (iv) *Rationalise, adapt and disseminate internal guidance on transposition*
- Guidance on transposition is available through a single point on the intranet under Departmental Guidance Notes on EU Matters.
  - The intranet has been used to raise awareness of the recently revised guidance and staff advised on how to obtain electronic and/or hard copies of the guidance.
  - The central guidance on transposition produced by the Cabinet Office was recently revised and now includes specific examples of good practice from across Whitehall, including several from Defra. Informal feedback from policy units on this new format has been positive and has not identified a need for a purely Defra-oriented version.
- (v) *Reinforce Regulatory Impact Assessments as a useful tool for planning transposition and implementation*
- Since April 2004, assessment of sustainable development has been mandatory for all RIAs across Defra, providing a more robust assessment of impacts.
  - Defra's Better Regulation Unit has been working with policy colleagues through the better policy making training courses and on a case-by-case basis to improve the overall quality of RIAs and sharing best practice through an electronic newsletter, Inside Policy.
  - Defra's Ministerial Challenge Panel on Regulation scrutinises the quality of RIAs and calls for additional work where necessary.
- (vi) *Improve its data on European legislation and its progress*
- As part of our five year strategy to reduce the administrative burden on businesses by 25%, Defra has mapped the existing regulations that impose administrative burdens and consolidated the results into a database. The mapping work is feeding into the Better Regulation Executive co-ordinated measurement exercise to assess administrative burdens from each regulation in order to derive a baseline position by early 2006. Once finalised, the database will be accessible to all staff via the intranet and will be used as a tool by policy makers and enforcement bodies to identify opportunities for simplification and understand the scope of existing regulations when considering new policies. It will also be used as a platform for the development of other better regulation initiatives.
- (vii) *Increase senior level oversight of transposition and implementation*
- The Ministerial Challenge Panel on Regulation, chaired by Lord Bach, meets every six weeks to review regulatory proposals put forward by policy divisions.
  - A report on the transposition status of all outstanding directives is prepared for each meeting and circulated to all Directors.
  - EU and International Co-ordination Division provide quarterly reports to Ministers on transposition of all EU directives and infraction cases.
- (viii) *Improve the co-ordination with the devolved administrations to achieve a timely response to legislation wherever possible*
- Defra has given presentations in the Devolved Administrations to raise awareness of the infraction process, to provide guidance on timely transposition and to promote closer co-operation between Defra and the Devolved Administrations.
  - The Department of Environment Northern Ireland and the Scottish Executive Environment and Rural Affairs Department have established transposition co-ordination units, based on Defra's model, to improve their co-ordination and monitoring of the transposition of EU legislation.

**Supplementary memorandum submitted by the Department for Environment, Food and Rural Affairs**

*Question 77 (Mr Richard Bacon): Status of welfare codes of recommendation*

Codes of Recommendation for the Welfare of Livestock are made under the Agriculture (Miscellaneous Provisions) Act 1968.

Part I section 3(1)(a) of the Act allows Ministers to “prepare codes containing such recommendations with respect to the welfare of livestock for the time being situated on agricultural land as they consider proper for the guidance of persons concerned with livestock”.

The codes are known as “statutory” codes because the procedures for their making are laid down in legislation, including the requirement that they must be debated in both Houses of Parliament. There is also a requirement for consultation—the pig welfare code was drawn up after a full public consultation, which included stakeholder meetings with the pig industry.

But the codes are not statutory in the sense of having the force of law. Their aim is to provide guidance on good husbandry practice. To achieve this they consist of two elements:

- (a) recommendations which reflect legislative requirements, only in plain English. For these a failure to comply with the recommendation would also constitute a failure to comply with the legislation, in the case of pigs the Welfare of Farmed Animals (England) (Amendment) Regulations 2003. Non-compliance with the legislation would be an offence. The codes make it clear which recommendations reflect the law, by using language such as “must” and those made since 2000 feature boxes—not themselves part of the codes—that quote the relevant legislation.
- (b) recommendations which simply give good husbandry advice for farmers and act as guidance additional to any legislative requirements. It is not an offence to fail to comply with these recommendations. Part I section 3(4) of the Act states “A failure on the part of any person to observe a provision of a code for the time being issued under this section shall not of itself render that person liable to proceedings of any kind”.

While the codes are meant primarily as guidance, compliance or non-compliance with codes may count as evidence in a relevant prosecution. For example, if a farmer is being prosecuted for causing or allowing unnecessary pain or unnecessary distress to livestock under the Act, the critical legal test is whether he or she has caused unnecessary pain or unnecessary distress. But the prosecution can support this case by providing evidence of non-compliance with the code as tending to establish guilt. Equally, a defendant can use evidence of compliance with the relevant provision in the code as tending to establish innocence.

The 2003 amendment to the Welfare of Farmed Animals Regulations concerning pigs went further than the underlying EU Directives 2001/88/EC and 2001/93/EC in one respect: they continued the existing UK ban on the use of close-confinement stalls and tethers. This had been the UK national position since the Welfare of Pigs Regulations 1991, agreed by Parliament that year and fully into force since 1999. The EU will come broadly into line with our national position with an EU-wide ban on tethers coming into force from the start of 2006 and strict limitations on close-confinement stalls from 2013.

The pig welfare code reflects that legal position. Other code recommendations that go beyond EU minimum standards are guidance as described above and not obligatory; farmers need only comply with the Regulations. It is worth noting that assurance schemes may require compliance with all aspects of a code. That is a commercial matter.

#### **Supplementary memorandum submitted by the National Audit Office**

*Question 48 (Mr Richard Bacon): Fines relating to infringement of the EC Treaty*

#### INTRODUCTION

1. In exercising its exclusive function as guardian of the treaties, the Commission monitors the uniform application of community law by the Member States as set out in Article 211 of the EC treaty. Article 226 states that the Commission can take action against a Member State for failing to fulfil an obligation under Community law. If the case reaches the Court and the Member State does not comply with the judgment, the Commission can take further action under Article 228 which could eventually result in a fine. Both the article 226 and 228 proceedings have three discrete stages. Each stage involves the Commission writing to the Member State, the Member State responding with evidence and then the Commission taking a view on whether it is satisfied with the response. If the Commission is not satisfied it moves the infringement on to the next stage but if it is satisfied then the case is closed. In total the six stages which must take place before imposing a fine can take a number of years. For a full account of the process of infringement proceedings please refer to Appendix 2 of the NAO Report.

2. To illustrate the extent to which Member States are complying with community legislation, the Commission publishes an annual report entitled “Monitoring the Application of Community Law”. The most recent report observed that as of 31 December 2003, a total of 3,927 infringement cases were running. Of these, the European Commission had commenced infraction proceedings under Article 226 in 1,855 cases. Four hundred and eleven of these cases have been referred to the Court of Justice, including 69 cases which have gone on to the Article 228 stage.

#### ARTICLE 228 STAGE—FINES AND PENALTY PAYMENTS

3. When fines or penalties are imposed upon Member States at article 228 stage by the European Court of Justice, they are payable to the European Commission. The procedure for collection of periodic penalty payments and lump sums by the Commission is as follows:

- The Directorate-General of the Commission in charge of the policy area realises the assessment of compliance and establishes a call for funds.
- This call for funds is transmitted by the Secretariat-General of the Commission to the Permanent Representation of the Member State concerned. It specifies the payment conditions and instructs the Member State to credit the Commission’s account by the due date.

- The call for funds covers a period of one month unless the Court’s judgement sets a specific payment scheme (for example, France was ordered to make payments on a six-monthly basis). Consequently, the call for funds needs to be repeated every month as long as the Member State does not comply. The due date is set at 45 days following receipt of the letter, unless the Court’s judgement sets different parameters.
  - If the Member State does not credit the Commission’s account by the due date, the Accounting Officer of the Commission immediately sends a formal notice requesting the payment plus default interest within 15 calendar days.
  - If the payment is still not made, the Accounting Officer recovers the amount of principal and default interest by offsetting against a Commission payment in favour of the Member State.
4. Non-compliance with judgements of the European Court of Justice so far has been limited to relatively few cases. The Article 228-procedure led to judgements by the Court only in three cases. All of these resulted in a fine; two of which have been paid, and the third is still pending:
1. **Directive numbers:** 75/442/EEC and 78/319/EEC  
**Applied to:** Greece  
**Date of court judgement:** 4 July 2000  
**Size of fine:** €20,000 a day until the landfill in question was closed.  
**Reason for fine:** Failure of a Member State to fulfil its obligations/non-compliance with waste directives (as specified in judgement of the court dated 7 April 1992). Greece had failed to comply with waste legislation on Crete.  
**Paid?** Yes—Greece has credited all calls for funds at the due date on the Commission’s account. The Commission’s consolidated revenue and expenditure account shows that €1.76 million was credited in 2000 and €2.96 million was credited in 2001.  
**ECJ Reference number:** C-387/97  
**OJ Publication:** 4 July 2000.
  2. **Council Regulation numbers:**  
2057/82—29 June 1982 (subsequently replaced by)  
2241/87—23 July 1987 (subsequently replaced by)  
2847/93—12 October 1993.  
**Applied to:** France  
**Date of court judgement:** 12 July 2005  
**Size of fine:** Initial lump sum of €20 million; periodic rolling fine of €57.8 million every six months if it fails to comply.  
**Reason for fine:** Failure of a Member State to fulfil obligations/non-compliance relating to fishing (as specified in the judgement of the court of 11 June 1991).  
**Paid?** Yes—France credited the lump sum of €20 million in October 2005, before the due date. Concerning the periodic penalty payment, the Commission services will proceed to an assessment of compliance after the first six months period. The call for funds will be established without delay for the period assessed.  
**ECJ Reference number:** C-304/02  
**OJ Publication:** 3 September 2005.
  3. **Directive number:** 76/160/EEC  
**Applied to:** Spain  
**Date of court judgement:** 25 November 2003  
**Size of fine:** €624,150 for every 1% of inland bathing areas in breach of permissible limits on water cleanliness.  
**Reason for fine:** Failure of a Member State to fulfil its obligations/non-compliance with quality of bathing water directive (as specified in the judgement of the court of 12 February 1998). Spain had not done enough to improve inland bathing water quality.  
**Paid?** No—this is because the legal analysis is still ongoing. Consequently, no call for funds has been addressed to the Spanish authorities so far. This file is still under investigation by the Commission.  
**ECJ Reference number:** C-278/01  
**OJ Publication:** 10 January 2004.

*Question 49 (Mrs Angela Browning): Italian Milk Levies*

1. Drawing upon existing published information, this note summarises the action taken by the European Commission when Italian milk producers exceeded their quota.

2. The supply of milk in the European Union is restricted by quotas. Each Member State receives two “reference quantities”, one for deliveries to dairies, the other for direct sales to consumers. These quantities are distributed among producers (individual quotas) in each Member State on the basis of historical production. If a national annual quota is exceeded, a levy is payable in the Member State concerned by the producers who have caused the overrun. Each year, the Member States report the results of the application of the milk quota scheme over the previous period to the Commission.

3. According to *Hansard* (19 December 1994), Italian milk producers exceeded their quota by 1.5 million tonnes of milk a year between 1989 and 1993. As a consequence, the Italian and Spanish governments (who had also exceeded their national quotas) were reportedly fined £2 billion and £1.4 billion respectively by the European Commission although these fines were ultimately reduced by some £900 million overall after a meeting of European Economic and Finance Ministers (ECOFIN) in October 1994. Payment of the fine began in 1995 when the Commission began to make automatic deductions from the monthly Common Agriculture Payments made to Italy.

4. Italian producers were granted a temporary increase of 900,000 tonnes in additional milk production in 1993 and this increase was made permanent in 1995 after the Commission acted upon the basis of a report to the Council examining the progress actually made in fully implementing the milk quota in Italy.

5. Nonetheless, Italian producers appear to have continued to exceed their milk quotas. From our discussions with the European Commission we understand that much of this excess production was caused by suspension orders issued by Italian courts in actions brought by producers, challenging the calculation of their quota or the way it had been notified. Consequently, the Italian authorities incurred difficulties in collecting the milk levy from its producers, and the Commission initiated infringement proceedings accordingly.

6. The Italian government requested and obtained Council Decision No 2003/530/EC which approved an aid scheme to pay the fine directly to the Community budget on behalf of its producers and to recover the sums from the producers over a period of 14 years. Although this is regarded as the end of the matter, the decision does require that the Commission produce a report for the Council on the progress of the application of the decision by Italy.

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