



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 16 February 2021

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
7th Meeting 2021, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

*Finlay Carson (Galloway and West Dumfries) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Angus MacDonald (Falkirk East) (SNP)

*Mark Ruskell (Mid Scotland and Fife) (Green)

*Liz Smith (Mid Scotland and Fife) (Con)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Terry A'Hearn (Scottish Environment Protection Agency)

Lloyd Austin (Scottish Environment LINK)

Roseanna Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform)

Professor Campbell Gemmell

Dr Viviane Gravey (Queen's University Belfast)

Gareth Heavisides (Scottish Government)

Robbie Kernahan (NatureScot)

Jim Martin (Environmental Standards Scotland)

Lisa McGuinness (Marine Scotland)

Professor Colin Reid (University of Dundee)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Virtual Meeting

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 16 February 2021

[The Convener opened the meeting at 09:00]

European Union Exit

EU-UK Trade and Co-operation Agreement

The Convener (Gillian Martin): Good morning. I welcome everyone to the seventh meeting in 2021 of the Environment, Climate Change and Land Reform Committee.

Our first agenda item is an evidence session on the environmental implications following the United Kingdom's exit from the European Union. We will hear from a panel of experts and then a panel of regulators.

I welcome our first panel: Professor Colin Reid, University of Dundee; Dr Viviane Gravey, Queen's University Belfast; Professor Campbell Gemmill, consulting partner, Canopus Scotland Consulting and visiting professor, University of Strathclyde; and Lloyd Austin, convener of Scottish Environment LINK's governance group and a board member of the European Environmental Bureau. Thank you very much for attending the meeting and for your written submissions, which have been very helpful.

I want to open up the discussion by going around each member of the panel to get their general views on an issue that has really concerned this committee and other committees over the past wee while. To what extent does the trade and co-operation agreement between the EU and the UK potentially impact on the Scottish Government's ability to exercise its devolved competence in environmental policy?

Professor Colin Reid (University of Dundee): Good morning, and thank you for the invitation to the meeting.

It is important to realise that the trade and co-operation agreement, because of the way in which it is structured, is about a relationship between the UK Government and the European Union, so everything really depends on the political relationship between them. There are non-regression provisions in the agreement that say that the parties will not reduce their environmental standards below the current levels, but they are limited, in that they apply only where trade and investment between the two parties is concerned.

Nobody is quite clear about exactly what that means. The consequences are unclear, because they depend on the political willingness of the two parties to take things on.

In the main provisions, there is nothing to stop Scotland continuing to seek high standards unless they are seen as making a material difference to trade between the whole of the UK and the European Union. However, that is in the hands of the political bodies.

There is a lot of uncertainty, and a lot depends on the political reactions to things rather than what we were used to in the EU structures, in which legal provisions dealt with everything and individual companies and parties that were affected could seek remedies themselves.

The Convener: Does Dr Gravey have anything to add to that, and any comments specifically about the devolved Administrations?

Dr Viviane Gravey (Queen's University Belfast): Yes. It is really interesting to see that there is clarification in the trade and co-operation agreement of what is understood as binding on the EU side—that is, EU-wide environmental standards. The assumption in the agreement is that there are UK-wide environmental standards—that there is a level that is the same across the UK—but we know that that is not necessarily the case already and that it will not necessarily be the case going forward. That is where we see that, in many ways, the trade and co-operation agreement has been blind to devolution and has not taken into account the potential for internal divergence. I am not yet sure whether that means that it will constrain future divergence. No one really knows exactly what it will do. It is still a brand-new agreement.

The Convener: Professor Gemmill?

Professor Campbell Gemmill: Can you hear me okay?

The Convener: Yes, we can.

Professor Gemmill: Thank you—and thank you for the invitation.

I agree with both Colin Reid and Viviane Gravey: I think that the issues are largely ones of uncertainty at this point. In theory at least, existing strengths and differences at the Scottish level could be continued, provided that they do not breach any of the overarching concerns. We do not know, however, and it sounds like it could be some considerable time before we are clear about that.

We will probably have to build up case law. How will the arrangements be tested? How will the various partnership, council and other proposed

subordinate mechanisms operate, and what impact will they have?

With reference to the point that I made at headline level in my submission, at some point we will need to be able to check the data to show whether we have evidence of difference and of impacts, positive and negative. It is almost alarmingly unclear at this point as to where we might end up.

The Convener: I invite Lloyd Austin to contribute; I will then ask some supplementary questions.

Lloyd Austin (Scottish Environment LINK): Thank you, convener, and thank you, everyone, for the invitation.

I fully agree with the three previous speakers about the uncertainty and lack of clarity. I agree with Colin Reid's comment that, in many regards, things will be determined politically rather than legally when it comes to the implementation of the agreement.

There are two things to note. First, from the environment's point of view, we must welcome the fact that the agreement is far better than no deal. Although it contains uncertainties and there is a lack of clarity, there is reference to and agreement on non-regression. The uncertainties around non-regression concern how, if and when that may or may not be enforced. All Administrations within the UK are constrained to the extent that they are not supposed to regress below current standards. That is welcome, and it is consistent with the Scottish Government's commitment to maintain or exceed EU standards.

It is worth mentioning that there is nothing in the agreement that prevents ambition beyond current standards, and that is as it is with EU membership. EU member states were always allowed to do better than the minimum required from membership. I do not think that, if the Scottish Government and the Scottish Parliament were inclined to have greater ambition, there is anything in the agreement to prevent that. If there were to be constraints in applying such ambition, that would be more likely to be an intra-UK issue than a UK-EU issue.

The Convener: You have brought me nicely to the idea of the level playing field, as well as the implications, at Scotland level, of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 for keeping pace with future EU environmental standards. There will potentially be legislation, regulations and mechanisms that take us further, for example on our emissions reduction targets.

Given the expectation that things must be consistent, with a level playing field across the UK,

how compatible is the idea of that level playing field—the intra-UK relationship—with any progressive policies through which Scotland, or indeed any of the devolved nations, might want to go further?

You brought that up, Lloyd, so could I get your thoughts?

Lloyd Austin: It is difficult to answer that question until people try to do it, or until we know more about how the UK Government and others will seek to implement legislation such as the United Kingdom Internal Market Act 2020. We raised concerns about the lack of environmental caveats to the market access principles, which have not been incorporated into that act. As yet, we do not know how that will be applied.

However, in the 20 years of devolution and before that, the Scottish Government and, previously, the Scottish Office had considerably different environmental laws and policies in Scotland, and that was never seen to be a problem within the UK internal market. Unless an issue affects general EU trade, I am not sure that the Commission will worry too much about differences between different jurisdictions in the UK. It is familiar with different jurisdictions within member states—Länder, in Germany, operate different laws. The Commission would be concerned only if levels fell below the European requirements; it is never concerned if things go ahead of European requirements.

The Convener: That is useful. Do the other witnesses want to comment?

Professor Reid: This discussion is identifying a long-standing issue with the devolution agreement. When the UK was part of the European Union, the EU dealt with many of the internal market issues and with the relationship between the UK and many international agreements, and divergence between the different parts of the UK could happen, with certain constraints; there was an envelope of EU law that limited divergence. Because of that, the divergence issue was never properly addressed when the devolution settlement was created.

Now we have to face up to the potential for much greater divergence and consider how that is controlled internally. There has always been the issue of the United Kingdom being responsible, internationally, for everything that happens in the UK, but the UK Government does not directly control everything that might be relevant. As I said, as long as we were in the EU, that issue was never going to be a big one, because divergence on important matters could never go too far; now, potentially, it can go far.

Dr Gravey: I reiterate what Lloyd Austin said. In many ways, things could go in completely the

opposite direction. The issue is not so much that the EU would take action against the UK if Scotland were to diverge upward; it is that the UK Government could trigger the rebalancing mechanism just because Scotland's being more ambitious had a negative impact on trade and investment for Scotland vis-à-vis the EU. We could have an odd situation in which the UK Government, acting for an England that had not become more ambitious, could still take rebalancing action on behalf of Wales or Scotland.

Professor Gemmell: I agree with all those comments. The agreement on good regulatory practice and the way in which regulatory divergence evolves will be important. As others have said, there has been permissive divergence, usually—although not always, I think—because higher standards were applied in certain locations.

Who will determine, and how will we trigger, issues of concern? Will that happen purely at UK and European Commission level, or will behind-the-scenes niggles, as it were, about things that are unsatisfactory—for example, in how the emissions directive operates in a jurisdiction or sub-jurisdiction—trigger an issue? In my submission, I mentioned the registration, evaluation, authorisation and restriction of chemicals—REACH—standards. If different guidance is applied to chemical products that then, at some point, become part of a market deal—including with third parties; for example, if a product goes to China and then comes back incorporated in another product—who will say, “Hang on a minute. That’s not fair, it’s undercutting the price of this”, or “it’s creating a larger market share in that”? What happens if regulators at the point of shipment are not applying the rules in the way that they are being applied at Grangemouth, or whatever? The nuts and bolts of such details will be interesting. They could be pursued on purely commercial grounds, which could then become highly politicised, depending on the lobbying impact of a particular trade body.

09:15

The issue might sound detailed and trivial at one level, but it could become quite significant. We have certainly seen World Trade Organization deals—such as those between the EU and the US, Japan and China, and China and the EU—get stuck on some of the details around product standards and the way in which products are produced.

The ramifications are potentially enormous, but I suspect, as usual, there will be totemic cases, or particular issues of political concern. However, at this point, it is really quite open. All sorts of things could become problematic, and vulnerable industries in Scotland could well be concerned.

We have already seen issues in the sea fish and seafood sectors. Such issues could go much wider, but will perhaps be a little more subtle or harder to identify.

The Convener: That seems like a good point to hand over to Mark Ruskell, who has some questions around the governance of the agreement.

Mark Ruskell (Mid Scotland and Fife) (Green): It sounds as though it is a good time to be a lawyer when it comes to the agreement.

On the governance and supervision arrangements, what are the mechanisms for dispute resolution, and how do you think they might be used in the future?

Professor Reid: It is not that great a time to be a lawyer, because so much of it is no longer about legal rights. It is more likely to be a lobbyist, rather than a lawyer, who will get the advantage.

The agreement has a variety of dispute settlement mechanisms. In the environmental area, most disputes are initially to be dealt with through negotiations and expert committees, rather than by going through formal arbitration measures. The hope is that matters will be discussed informally between the parties. There are expert committees that can provide opinions on things, but the resolution will still be in political hands. If there are material impacts on the parties, there are options to take rebalancing action—basically, retaliatory measures—ideally in the same area and definitely proportionately. Those measures could spill out into other areas, however, such as the way in which the Scotch whisky industry is currently suffering as a result of the unresolved dispute on other matters between the EU and the USA.

As with everything else in the long agreement, it is complicated, and there are several different ways that it could go. However, the hope is that such disputes will be settled in the political field, rather than by relying on the more formal mechanisms.

Mark Ruskell: Before I ask the other witnesses to answer the question, where do you see the devolved Administrations sitting within those bodies, such as the partnership council or the specialist committees? Is there any clarity on whether there will be Scottish regulators, Administrations or even parliamentarians on any or all of those structures?

Professor Reid: I have not seen anything at all in the public domain about how they will be set up, who will be sitting on them, or to what extent, if at all, the devolved Administrations will be reflected in them. I have certainly not seen anything about who will actually be there. I am relying only on

what is in the public domain, rather than on any inside knowledge.

Mark Ruskell: Okay. I will go around the other witnesses, starting with Dr Gravey.

Dr Gravey: As Professor Reid said regarding the use of expert panels, we do not know who the experts will be, but we know that the EU does use the panels. They are not there just for the sake of having something, but are never used. We know that there is currently a dispute with Korea on labour commitments, which falls under the level playing field for industry provisions, under the sustainable development obligation in the EU-Korea agreement.

That gives us some insight into the kind of disputes that can take place. There were issues with Korea derogating labour protection and there were informal discussions between the parties before they moved on to asking for an expert panel in 2018, which finally reached its conclusions in January 2021, and found in favour of the EU. That shows that things will take some time if we go down the expert panel route.

Professor Gemmell: I agree with Viviane Gravey. It is unclear, but I imagine there will be a danger if we do not take the mechanisms seriously. I did a piece of work with colleagues from the World Bank on the Moldovan memorandum of understanding and agreement with the EU, which was far from accession, but was an early indication of standards, alignments and so forth between the Moldovan Government and the EU. The partnership council and the technical working groups that were put in place moved rather slowly, but became very significant in respect of the final trade agreement and the way in which it was policed.

It is very important that Scotland pays close attention and tries to find a way, with the UK Government, to become as actively involved as possible. That extends to the civil society forum, which is possibly the area in which broader societal impact and non-formalised agencies and organs of government get the opportunity to raise concerns and consider standards that might have a significant impact on society more broadly. It is important to pay attention.

Lloyd Austin: I agree with all the comments made by the previous three speakers. I would emphasise that it is a political—with a small p—rather than a legal process: ultimately, everything is resolved by negotiation between the UK and the EU, advised in different ways by panels of experts, the civil society forum and so forth. However, in all cases, there needs to be political will from one or other of the two main parties to seek that advice, to appoint the relevant groups, to take note of what they say and potentially to take action on the

basis of it. I suspect that there will be many things that are subject to much discussion and only those that have political resonance will rise to the top of the pile and see action being taken. Therefore, it is important that voices for the environment and for Scotland speak up as much as they can in that process.

It is not clear how and when and who appoints the various groups and how, for instance, the civil society forum will be created. The non-governmental organisation sector, including both Scottish Environment LINK and the EEB, welcome the concept of a civil society forum and having a civil society voice in the process, but we are not yet clear how that will be formed and what its role will be. It would be valuable for all our sakes for people to speak up and seek Scottish voices on all the forums.

Mark Ruskell: Thank you.

Claudia Beamish (South Scotland) (Lab): [*Inaudible.*]—attending in these deliberations. On a positive note, can you share your thoughts on priority areas for collaboration with the EU? Will the agreement assist with collaboration between the EU and the UK, particularly in addressing the climate emergency—including collaboration on the 26th conference of the parties—and in dealing with the inextricably linked nature emergency and taking forward the vital green recovery? What role is there for the Scottish Government and our Parliament in any future collaboration in key strategic areas? I highlighted two areas that relate to our brief, but you might like to highlight others.

Lloyd Austin: There must be two forms of collaboration—formal and informal. As Colin Reid made clear, formal collaboration must be between the UK and the EU, because that is the legal nature of the agreement. The Scottish Government and the Scottish Parliament should work with the UK Government to get as much involvement as possible in that formal collaboration.

That does not prevent informal collaboration from taking place in addition—not instead. It is important for Scottish society to maintain collaboration with the European networks. I hope that Scottish Environment LINK is doing that through our continued membership of the EEB, whose area is wider than the EU. A lot of NGOs in non-EU countries in Europe participate in the EEB, which deals with global as well as EU matters.

It would be positive if other sectors took a similar approach to having as much informal collaboration and networking as possible, whether that is intergovernmental or interparliamentary. That is valuable for learning and so forth.

I will point to two or three priorities on the environment. In advance of COP15 in China in

May, which is on biodiversity, the EU has launched its new biodiversity strategy, and the Scottish Government is committed to refreshing its biodiversity strategy this year, along with the COP process. Collaboration on that is important. The EU is committed to legally binding nature recovery targets and a trans-European nature network, which are both things that the Scottish Government could pick up on. Collaboration on the green deal would be valuable in looking at how that affects different sectors of the economy—particularly agriculture.

Given our marine boundaries, collaboration with EU states and non-EU states on the marine environment and fisheries is—inevitably—important. We have a number of important marine protected areas that abut neighbouring states' marine areas. Collaboration and co-operation in managing them are important.

Claudia Beamish: Will you say a little more about marine issues? What are the best informal arrangements to protect our environment and provide appropriate mechanisms for our coastal communities' future?

Lloyd Austin: The marine environment is a classic example of the environment not respecting political boundaries—currents, fish shoals and other things cross boundaries all over the place.

There must be two kinds of co-operation. There must be the formal co-operation that can lead to agreed, legally binding arrangements, but I think that those work better if there is also informal co-operation, collaboration and networking, so that people know one another, know one another's interests and concerns, and can learn from good practice from each country and so forth. The more such co-operation there is, the better.

09:30

In relation to the management of fish stocks or the management of transboundary marine protected areas, it is important that there is agreement on objectives and on the application of appropriate joint measures, but for any of those to have effect, they must be implemented formally, because of the need for them to apply in law. However, they work better if there is parallel informal co-operation.

How the Scottish Parliament's and the Scottish Government's legal responsibilities equate with the UK Government's role in international negotiations comes back to the issues inherent in the devolution settlement, which Colin Reid talked about earlier.

Dr Gravey: Having compared the trade and co-operation agreement with other EU trade agreements, I think that the possibilities for

regulatory co-operation and for working together in international fora on the environment are wider and more developed. There is definitely an appetite for that and, at least on climate issues, there is a clear commitment to having well-functioning carbon trading in place for 1 January and to climate neutrality. That is clearly stated.

There is a question as to whether that motivation on climate is present for other environmental issues. In that respect, COP26 in Glasgow will definitely be a key test—both parties have said that they want to have an impressive deal and to keep on working together, and COP26 will be a test of that. However, COP15, which Lloyd Austin mentioned, might be a better test because, so far, there has not been such a high level of commitment to biodiversity—at least on the part of the UK Government—as there has been on climate.

Claudia Beamish: Who would like to go next? Perhaps we could hear from Colin Reid and then Campbell Gemmell.

Professor Reid: It is good that the agreement has within it all sorts of commitments to working on climate change, sustainability and so on, but they are general commitments that set out wide aims rather than concrete obligations to do things. In the area of fish, there are very detailed provisions that set out a framework and certain policy goals that the fishing objectives will follow. However, it all comes back to political will. It is better that such things are said in the agreement, as that allows people to lobby and those in government to pursue such issues and say, "We should be doing this," but when it comes to requiring things to happen, as with most international agreements, the EU-UK agreement is remarkably weak—there is remarkably little there.

Professor Gemmell: I agree with all of the above. I want to highlight the issue of regulatory co-operation, which Viviane Gravey touched on. Because we have developed such a lot over the past 25 years when it comes to the relationships between the various bodies across the EU, and Scotland has played a disproportionately strong role, not just in the brown environment but more generally, that has been very valuable mutually, and I know that there are a lot of people in the Commission, the European Environment Agency and other relevant institutions who are keen to continue to have that input. We have tended to take an engineering-led, technical approach to a number of those issues, and I hope that that will continue to be a priority.

As we continue to decommission the major units in Scotland, access to EURATOM's expertise is and will continue to be valuable. The loss of some of the oversight and peer review opportunities was a risk, but I think that it is relatively safe at this

point and, in addition, there is the International Atomic Energy Agency involvement. However, I hope that that will continue to be a priority, and there have been times when the UK Government has taken a rather less focused view on that than was the case in Scotland. We want to be sure—and I would certainly urge—that that co-operation is seen as a priority.

Scotland will want to continue to be aware of the way in which the joint research centre of the European Commission works at the EU level, because that technical advice underpins so many different areas of regulation, not just in the European market but in the UK context. If we are not seconding people and not maintaining networks, there is a danger that that influence, impact and focus might be lost over time. I see those areas as very important.

Finally, I imagine that the committee can take evidence on this—the committee has already had a good set of inputs from the UK Climate Change Committee. Given that, like water, air does not respect international boundaries or even internal boundaries, I would be interested in its views on how to ensure that the trading agenda and the way in which emissions targets are worked out are also priorities.

Claudia Beamish: I thank the witnesses for those helpful answers, which have given us a lot to think about with regard to what we might do to connect with and make suggestions to the Scottish Government and Parliament.

Dr Gravey: An obvious area for co-operation is any piece of EU environmental legislation that falls under the Northern Ireland protocol. Northern Ireland will have to keep pace anyway, so it would be good to have regulatory co-operation on those areas to enable the rest of the UK to keep pace more easily and thus not widen the gap between Northern Ireland and Great Britain.

To jump on what Lloyd Austin said about the difference between informal and formal ways of co-operating, I note that there are other formal means of co-operation. I am thinking of the Good Friday agreement, the British-Irish Council and the fact that, for example, the Irish Government has pledged to develop much stronger links with the devolved Governments. With regard to policy development, it is important that there are ways in which to have Scottish views heard in Brussels, and there was definitely an appetite on the Irish side to facilitate that.

Professor Gemmell: I have just remembered that we have not really touched on the UK Environment Bill. It will be important to find opportunities—particularly informal opportunities, I suspect—to influence matters, because, if the UK Government alone, without input from the

devolved Administrations, determines what is a priority for collaborative effort, we risk not having a number of Scottish issues taken seriously. Eventually, when the full detail of the UK Environment Bill is visible, I hope not only that the final arrangements for the office for environmental protection will become clear but that we will get a stronger sense of some of the priorities. To give credit where credit is due, some of the work that has been done on air pollution control in England has been extremely productive, and the cleaner air for Scotland strategy work happened on the coat-tails of that, to some extent. I hope that continued air quality management and pollution reduction will be a priority at the UK/England level.

However, I think that we will get a further opportunity to influence, I hope, but certainly to see what the UK Government considers the priorities to be. That will allow for a clearer view as to what we will be able to align with in Scotland but, equally, where we might have to put in further informal effort to tackle the important issues.

Lloyd Austin: Vivian Gravey's comments about Northern Ireland and the British-Irish Council reminded me of other international arrangements that provide other opportunities for co-operation with informal structures that are not part of the EU but in which the EU takes an active part. Participation in such structures would therefore enable collaboration with EU partners. In particular, I am thinking not only of the United Nations processes, such as the COP for climate and biodiversity, but regional ones, such as the Aarhus Convention and the work that is done under that in relation to access to justice in environmental matters, which I know is an issue of concern to some members of the committee and will be part of the future consultation on environmental governance under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. Engagement in the United Nations Economic Commission for Europe would be a good way to maintain good relationships on those matters. There is also the Council of Europe. I am not sure whether its parliamentary congress includes people from the Scottish Parliament, but there are ways in which folk from Scotland could be engaged in those processes and so keep tabs on European developments.

Mark Ruskell: Are there particular markets where enhanced collaboration could deliver benefits for the environment? I was thinking in part about the European Union's strong target to increase organic food and farming. Could that be an area for collaboration? Solar panels and embedded renewables are other areas where collaboration over standards and markets could be beneficial and a way forward. Does anyone want to chip in on that?

Dr Gravey: In many ways, because it is the UK and the EU that can initiate regulatory co-operation, rather than Scotland, it is all about selling to the UK Government those areas where regulatory co-operation should be pursued. We have an agreement in which there are lots of commitments around trying to further trade and sustainable development together. The areas that you have pointed out are definitely something for which there may be appetite in London. Although they are not necessarily the only areas where regulatory co-operation should be pursued, they may be the easier ones, to start with at least.

The Convener: We will move to questions on replacement for EU funding.

Angus MacDonald (Falkirk East) (SNP): As a non-EU member state, the UK is no longer entitled to automatically participate in EU funding programmes, including the CAP, LIFE funding and structural funds. However, the agreement makes provision for UK participation in horizon Europe 2021 to 2027, which is a £100 billion research programme. As an aside, when the committee visited Brussels some time ago, we met a Norwegian directorate that told us that Norway participated fully in what was horizon 2020. Of course, now Norway has a closer tie with the EU than we have. What are the implications of the agreement for the formulation of replacement funding programmes, including any rules on subsidies and state aid, which will clearly be an issue?

09:45

Professor Gemmell: It is a good question, but I am not at all convinced that I know the answer. The loss of structural funds across the set is a major issue—Scotland has benefited substantially from them over the years—and the horizon component is potentially significant. We are talking about Erasmus workarounds and various other things are being considered, so there are ways forward. However, LIFE has been creatively and constructively used over the years and its loss alone is a major blow.

I cannot think of simple paths toward substitution; the funding simply does not exist. As you said, the Norwegian relationship is based on the larger access opportunities that the EEA has and we do not. I cannot offer a constructive response to your question. It is a good one and there is a problem, but I cannot go further than that.

Lloyd Austin: Unfortunately, I have a similar answer to that of Campbell Gemmell. It is a good question and a big issue. I reiterate the importance of LIFE, which has enabled environmental NGOs—often in partnership with SNH, Forestry

and Land Scotland or other public agencies—to deliver a lot of significant biodiversity conservation work on the ground in Scotland. In the 10 years running up to when we left the EU, about 25 per cent of the LIFE funds that came to the UK came to Scotland. We were disproportionately successful in winning that money, and it is important that we try to replace the funding. That has to be an argument that the Scottish Parliament and the Scottish Government put to the UK Government in seeking to work out a solution. I do not know whether there is a way of creating a Norwegian-style relationship.

On subsidies and state aid, you highlighted CAP funding. I reiterate the view of environmental NGOs that reforming agriculture policy remains an important agenda item for the future. On the interaction of agriculture subsidies and international trade, it is clear that the more such subsidies are directed into delivering public goods—whether it is the environment, the landscape, access to the countryside or even issues such as the maintenance of population in remote areas, which is an interest of Angus MacDonald's—the less impact there is on trade deals. The public goods form of subsidies, in which public money delivers public goods rather than price and market distortions, are possibly the way to go for subsidising farming and crofting in the long term.

Angus MacDonald: What are the priorities for the development of replacement funding schemes?

Professor Reid: The point that I want to make is not so much on the replacement fund, which is now very much a domestic matter for the UK and Scottish Governments to decide how they will develop their policy on. My point relates to subsidies. There are significant provisions in the agreement about subsidies, particularly those setting down the principles on which they can be granted. Those allow for environmental support and so on but also provide for structural and formal issues relating to greater transparency for subsidies, a body that supervises them, access to the courts and so on. There will be a lot of thinking in both the UK and Scottish Governments about the processes by which subsidies are provided, but if things fall within the terms of the agreement, they will fall within that procedural framework, which is much more formal than what we have been used to.

Angus MacDonald: Thank you. I also note Professor Gemmell's helpful comment in the chat box.

Liz Smith (Mid Scotland and Fife) (Con): My questions are largely about the environmental governance challenge. The agreement provides that each party has to ensure that domestic

enforcement agencies give due consideration to any violations of environmental law. What do you consider to be the priorities for the further development of environmental governance in Scotland in relation to that? I do not mind who answers.

The Convener: We will just go round, starting with Viviane Gravey.

Dr Gravey: I did not fully hear the question.

Liz Smith: In relation to environmental governance, it is clear that both parties have to pay due regard to any violations and the mechanisms for dealing with them. In the new set-up, what are the priorities for ensuring that environmental governance in Scotland is as good as it should be?

Dr Gravey: In general, environmental governance around the UK has had multiple issues with compliance with the Aarhus convention and with making access to justice free rather than prohibitively costly. That is repeated in the trade and co-operation agreement. The biggest priority is to make sure that organisations have similar ease of access to justice as they had with the European Commission—something that means that it is free to raise complaints. The issue of cost for an organisation is important.

Liz Smith: Is there any benefit in having a beefed-up environmental court system? In the continuity bill, the Scottish Government agreed to ensure that there would be a review of that issue. What is your view on environmental courts?

Dr Gravey: As a non-lawyer who is not very familiar with the Scottish system, I will leave my colleagues to respond to that.

Liz Smith: Lloyd Austin raised the issue when we were looking at amendments to the continuity bill. I am interested in what he thinks about tightening up environmental governance.

Lloyd Austin: Scottish Environment LINK was very pleased that the committee supported the amendment in the continuity bill to ensure that there is another look at governance in a couple of years' time, once Environmental Standards Scotland has bedded in, developed its strategy and so on. That is the first part of any answer to that question. We will need to see how ESS and the OEP bed in, in relation to devolved and reserved matters respectively, and see how they do in terms of their responsibilities and how they operate in practice.

I question to what extent those two bodies will look at the issues of non-regression, alignment and so forth that we have been talking about under the agreement and whether they will make recommendations to the UK and Scottish

Governments about environmental policies and law in relation to the agreement.

Environmental Standards Scotland has a duty to keep under review international commitments relating to the environment, so it will be interesting to see how it does that, what it advises the Scottish Government to do in relation to what it observes and whether the Scottish Government acts on that advice. Those are all questions that the review under the 2021 act should ask and, if necessary, it can beef up or provide additional powers or responsibilities to ESS.

Liz Smith: In relation to what has recently happened in England, where there definitely have been some issues, are there sufficient channels to enable good co-operation on environmental standards between the rest of the UK and Scotland, or are there other ways in which we could improve the mechanism for collaboration?

Lloyd Austin: It is probably too early to say. To start with, we have an unfortunate delay in the UK situation, with a delay to the UK Environment Bill and therefore the establishment of the OEP. That is a disappointment but, equally, it could be an opportunity to improve the bill even more as it goes through the final stages at Westminster. Co-operation with ESS and other devolved bodies might be something that we would seek to improve in that bill.

On the second part of the question, I would like to return to the point that Viviane Gravey did not answer, regarding Aarhus and environmental courts, which—as you say—is part of the consultation under the 2021 act.

I agree that all jurisdictions in the UK have frequently been found by the Aarhus compliance committee not to be in full compliance; it is not only costs that are an issue but the consideration of merits. We should look seriously at compliance with the various environmental justice requirements—compliance with not only the letter but the spirit of those conventions. We have a serious issue in Scotland in terms of the rights of individuals, communities and NGOs to hold the Government and agencies to account for their decisions on environmental matters.

If you look at the way in which environmental courts operate in other jurisdictions, they are excellent vehicles to create the right spirit and to enable all parties to have a say at an affordable cost. Such courts do not necessarily always find in favour of the environment. I did a study once on the environmental court in Vermont, which was promoted by the business community in that jurisdiction because they were looking for greater consistency between counties within the state. By ensuring judicial oversight of planning and zoning decisions, as they call it there, the business

community felt that there was greater consistency and speed in decision making but, equally, compliance with environmental law.

There are great benefits to that approach and all those issues should be part of the review of environmental governance as a whole that the 2021 act now requires in, probably, early 2022.

10:00

Liz Smith: That is helpful.

As became clear when we were debating the continuity bill, and as has become clear since then, not least because of the issues that have affected SEPA recently, many communities and individuals are genuinely concerned about holding to account agencies or the Scottish Government—or whatever Government—when laws are broken. There are issues around whether they have the ability or perhaps the finance to do anything about that. I am interested in your view on that point, because we must pursue that key issue to ensure that there is a level playing field for anyone who feels that there is any injustice.

Professor Reid: I think that the governance review is important. The previous two Scottish Government consultations on an environmental court have been absolutely awful. It has suggested models for an environmental court that no one has been seriously proposing and it has been incredibly narrow in what it is looking at.

It is important that the governance review looks at everything, including administrative systems, administrative appeals, criminal enforcement, other forms of enforcement, the role of a court, what a court would do and how it would fit with other bodies. There is a lot that needs to be thought about together. In the past, tiny bits have been looked at in isolation, which is a problem and is no good for anyone. Making sure that the governance review takes a proper broad look across the whole area is important.

Professor Gemmell: I suppose that that subject has been the main area of my career, and the reports that I have written on it are available and fairly lengthy.

We had a gap before, but now there is an enormous gap because we do not have the European Commission or the European Court of Justice. We also have a gap because the ESS is likely to look at the strategic and systemic level, rather than at individual case level.

I imagine that the TCA will be fully within the ESS's remit, and therefore it will be able to look at all the components, including chapter 7, which is the environmental information bit about Aarhus. However, we need a robust court system and a commission-type body that investigates at

individual case level. We do not have either of those. We need an educated and robust civil society approach overall; there are small steps in that direction, such as the Environmental Rights Centre Scotland, that are important and need to be built on.

There is also a need to reform the existing governance of our bodies. Those were inadequate before we left the EU, and they are now grossly inadequate. The danger of individual entities in and below Government marking their own homework is substantial. Without adequate and robust case-level interventions to assess and hold bodies to account, we are not capable of operating a sufficiently robust environmental governance system in Scotland.

Liz Smith: That is a strong message.

Finlay Carson (Galloway and West Dumfries) (Con): I want to look at environmental concerns when it comes to future trade deals. [*Inaudible.*]—the implementation and observance of international agreements, but not actually in their negotiation. How will future trade agreements interact with the trade and co-operation agreement? How will the Scottish Parliament's ability—[*Inaudible.*]—environmental areas be affected in future trade deals? I put that to Viviane Gravey first.

Dr Gravey: There are two elements to my response. There is much that is far from satisfactory even in the Westminster Parliament's debating of the trade agreement. I assume that, as the UK negotiates more and more deals, there will be pressure to have a stronger mechanism to debate the content of trade deals and to ratify them after a fuller debate.

The fact that the trade and co-operation agreement was made available to the Westminster Parliament shortly before it had a vote on it was very unsatisfactory. It is hoped that, over time, there will be a better process, although that would require pressure in Westminster.

On whether that process will include devolved Administrations, we know that that has happened in certain areas. We all remember the Walloon Parliament holding back EU ratification of the EU-Canada Comprehensive Economic and Trade Agreement, so there is a possibility for devolved participation in other political systems. However, for now, because of devolved competences, having a voice at the ratification stage is more likely to be an informal process. In many ways, it is important to have that voice, but it is better to have it earlier in the process. That brings us back to not only having representation on all the different committees that were created for this in the trade and co-operation agreement but, more generally, trying to have representation in the different

commissions that are set by a department for international trade. That is not going to happen overnight. Making sure that devolved interests are considered is a long process, and, for now, it does not look like something that comes naturally for trade officials on the UK side.

Professor Gemmell: I agree with all of that. It is not clear where we will be for future deals. In her written submission, Viviane used a very nice line about the “zombification” of EU law, and one challenge that we will face is the way in which we keep pace—the way in which future trade deals incorporate advances in EU environmental legal positions and how that matches what happens in the UK.

I go back to the UK Environment Bill, because I do not think that all the lines on competence have yet been drawn. How those influence the way in which trade deals are done and the environmental terms will be very important.

I do not have too much to add. We will be able to learn a lot from what happens over the next few years, but it will be hard to form judgments too early on in that time about what future deals will look like. We will have to wait and see what, if anything, changes about the nature of the dynamics within the UK and between the UK and the EU.

Finlay Carson: I will open it up to Lloyd Austin and Professor Reid. Are there any lessons that you can identify now for the UK Government regarding negotiation of future agreements? How would devolved Administrations interact with the negotiation process, particularly following what we have just experienced with the TCA?

Lloyd Austin: I agree with everything that Viviane Gravey said about scrutiny and the issues of involving devolved Administrations. Perhaps because trade negotiations have been an EU matter over the past few years and certainly since devolution, we have not had much experience of this. The UK and Scottish Governments and the other devolved Administrations should seek to work it out, however, because greater involvement of all parties in the discussions is important. From the environmental NGOs’ point of view, the reason for that is that all trade deals should have enforceable non-regression mechanisms. They should not be limited to impacts on trade and investment but should be a prerequisite of all trade agreements.

All countries in the world seem to like saying that they have environmental ambitions, yet across the piece we see trade agreements that enable different countries to seek trade advantages and benefits by undermining environmental standards. I am not picking on any

particular country in that sense. Many, if not all, countries are guilty of that at times.

There is a need to make environmental and trade ambitions more closely interrelated. Given their environmental responsibilities, devolved Administrations need greater involvement in the negotiation and scrutiny of the implementation. How that works, I do not know, but that is an example of the need to get more efficient and effective intergovernmental and interparliamentary relations working in the UK.

Professor Reid: In relation to negotiation of future agreements, it will be possible to point to the non-regression provisions in the TCA if it looks as though a deal with somebody else is going to undermine standards. We will be able to say, “Hold on—you can’t do that, because you’re going to fall foul of the TCA.”

On the wider issue of lessons to be learnt, learning lessons depends on a vaguely willing pupil or one who is actually going to pay notice to the negative consequences if they do not learn. I do not think that, on either count, the past four years have been a great example from the UK Government of wanting to achieve the best with regard to how to go about negotiating.

Professor Gemmell: I will pick up on elements of that. The issue about chlorinated chicken is well known, but it has become totemic almost to the point of distortion. There are many examples from some of the technical advisory work that was done over the past decade, such as around REACH, which I have referred to. For example, the standards involved in the production and use of a particular paint were lowered, and it took a technical sub-group based in the UK to pick up on the fact that the EU was about to agree that with China. Again, that seems very detailed, but the lowering of those standards would have meant that a highly polluting plant would have been given an EU contract in China to produce a material, which we would not have allowed as a product into the UK.

The sort of forensic scrutiny that might need to be applied to some of these issues is acute and serious and could affect many small manufacturers or dedicated product companies in the Scottish and broader UK context. Therefore, that kind of international collaboration with technical bodies is required to ensure that those trade deals do not deliberately or inadvertently result in the offshoring of carbon or inshoring of potentially damaging material.

The Convener: Mark Ruskell has a supplementary question. Finlay Carson, have you exhausted your line of questioning or do you want to come back in?

Finlay Carson: All I can say is that, as has been the case with many of the questions that we have asked this morning, the answers raise a whole heap of new questions that seem even more complicated than the original ones. However, I thank the witnesses for those responses.

Mark Ruskell: I am trying to get something clear my head, but perhaps there is not an answer to the question at this point. If we have the TCA—the EU-UK trade deal—and we have these mechanisms built in, with working groups and so on, how does that match up with the style of trade deal that we might get in future that would be more like the transatlantic trade and investment partnership, with investor-state dispute mechanisms and corporate courts? There is a very different infrastructure around negotiations and disputes. Where do the witnesses see the power lying within that? Is the EU-UK trade deal strong enough to pull standards in the European direction, or could other trade deals with other mechanisms take on what we have in the EU deal?

10:15

Professor Reid: You are perhaps looking for a level of coherence that has not been particularly noticeable in recent years. The present position with the Northern Ireland protocol is a classic example of that. Northern Ireland is in the customs union and meets EU standards, but it is also in the UK. We seem to have been quite happy to agree what is in a sense an irreconcilable position between the two. Northern Ireland either has to be in or out, but the UK Government seems to want both.

Different agreements tend to operate in and be dealt with in silos—different teams deal with them—and I am afraid that joined-up thinking is often just not there even across the UK Government, and far less between the UK Government and the devolved Administrations. Therefore, I do not see any great prospect for some grand, consistent and coherent pattern across all the deals. Each deal will be done separately, in the hope that it will not rub against other deals too badly and, if it does so, that will be at some time in the future and somebody else will sort it out. If there is a political will to sort it out, a way will be found.

Lloyd Austin: Colin Reid has said much of what I was going to say, so I will not repeat that; I will simply say that I agree with it.

Under the non-regression part of the TCA, if another agreement is causing the UK to lower standards, the EU has the ability to say, “Hang on—you can’t do that under this agreement.”

Therefore, it would be possible for complaints to be made about another agreement that would result in the lowering of standards. However, as we have said before, there is a lot of uncertainty about how the TCA would be enforced, and that relies on political will. If the UK has made an agreement with a third party, the chances are that the EU might want to make an agreement with that third party as well and therefore it might well be in the same boat, if you see what I mean.

All these things will rely on political will and a degree of cohesion. The bigger and more important point is that we need to seek as strong and enforceable an environmental ambition as possible in domestic and international agreements and law. The more that every country can enable citizens and communities to challenge their Government on environmental performance, the more that Governments will take note of that and will not seek to undermine their own ambition in trade matters.

Dr Gravey: The agreement, as a trade and co-operation agreement, can definitely be seen as preventing really wide-scale deregulation and as ensuring that the UK would not be able to undercut EU policies. The problem is with new agreements with other parties. An agreement that allowed for importing goods from a party that did not meet EU standards at all would make it harder for EU businesses to sell to the UK, because the products would be replaced by those from another country. That is where there are potentially links between the TCA and future agreements.

However, the EU is the UK’s closest trading partner. Many of the deals that the UK will make will be with very small economies, so it is unlikely that such trade agreements will have an impact that is sufficiently large to trigger the large impact on trade and investment that underpins the non-regression principle in the treaty. Even if that were to happen, we would be back to the question that Lloyd Austin or perhaps Campbell Gemmell raised at the beginning about how we actually measure that impact. Do we know what data will be used and what we will look at?

As long as we do not know how we will measure the impact on the level playing field, it is hard to answer that question.

Professor Gemmell: That was largely the point that I was hoping to make; the issue is how we will know—it could take some considerable time to do so. However, I have a feeling that, because of the way that Administrations will work, only the most important issues will be given attention, so it will matter hugely where there is a critical divergence between Scotland and the rest of the UK. I imagine that, in the agreement and its policing, the UK will dominate and, therefore, something that is of particular significance to Scotland could be

overridden or not brought to attention. The centre of gravity will undoubtedly lie at the EU end. There are competing cases or pressures; there will be a draw for Scotland to maintain that contiguity of standards with the EU level but, at the same time, if there is a competitive advantage that the UK seeks in different standards, Scotland could be at a disadvantage. However, we will not know for a while and we might not know for a very long time, depending on the data that we can get our hands on.

The Convener: We are rapidly coming to the end of our session and we still have questions from Stewart Stevenson, but Angus MacDonald wants to ask Professor Gemmell about something that he mentioned on REACH.

Angus MacDonald: We will be putting this point to the next panel of witnesses from regulatory bodies, but given that Campbell Gemmell raised the issue of REACH, I want to ask about it now. We know that a deal was not agreed to share REACH data—which is held by the European Chemicals Agency—with the UK. We also know of a joint letter from chemical and other industry associations to the Government, asking for a radical deregulation of the UK's post-Brexit chemicals regime. The letter reportedly proposed that the Government should deregulate the Great Britain REACH regime. The deregulation would remove the obligation for industry to submit detailed safety data and instead create a weaker and slower system, so it is no wonder that the industry is referring to the new regime as BREACH. The industry proposal would mean that it would not be a robust regulatory model, because the GB regulator would have insufficient data to properly regulate chemical use. That is a concern to me. Do you agree, Professor Gemmell?

Professor Gemmell: I agree; you are absolutely spot on. It is potentially a really serious problem, not only because of the deregulatory underpinning, which is intended to make it easier to produce and use chemicals in a more laissez-faire manner—which I never think is a good idea—but because the regulatory oversight model is so fractured.

In Scotland and the rest of GB, we are dependent on the Health and Safety Executive and its involvement in that space. At a resources level and in terms of technical leadership and collaboration, that has not always been terribly effective. We might get Scottish and other regulators saying, “We will rely on the best possible—blah, blah, blah”, but I remain to be convinced on that front and I think that we need to substantially maintain the REACH standards.

In many ways, the previous failure to get a better grip on that at the Scottish level, by having the HSE's powers devolved to Scotland, is still an

open question and merits serious attention. Even if the arguments against it are based on a critical mass of expertise, that did not win the day with regard to an environmental regulator, so I do not understand why it cannot be applied more robustly to health and safety, which is rather important.

Angus MacDonald: Thank you.

Dr Gravey: Of course, REACH is part of the regulation that Northern Ireland will have to keep applying under annex 2 of the protocol. Therefore, deregulation of chemicals in GB would further widen the gap between Northern Ireland and GB, which would not be a good idea.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I will not delay us terribly long, because I simply want to ask whether we know of any further implications of the TCA in relation to any of the specific common frameworks. The subject has been touched on continuously throughout our discussions. Does Campbell Gemmell have any observations on that, as well as anyone else who thinks that they have—*[Inaudible.]*

The Convener: I hope that you got that. Stewart is having connection problems today, but I think that you got the gist of it. I will go to Professor Gemmell first. If anyone else would like to come in, please put an R in the chat box.

Professor Gemmell: I suspect that Lloyd Austin is better placed to comment on that than I am. I certainly cannot think of any relevant comments that I can add to what has already been covered, so I will not take up any more time.

Lloyd Austin: Thanks, Campbell, for setting me up. I have little to add. NGOs—I mean not just Scottish Environment LINK but our partners in Greener UK—have maintained dialogue with the UK, Scottish and Welsh Governments and the Northern Ireland Executive about common frameworks, a number of which are operating on a provisional basis. We are expecting the formal stakeholder engagement to happen this year, before the provisional frameworks are signed off. It seems to us that, to a great extent, the frameworks are about process and procedure—about how the officials of the four respective Governments are going to work together—rather than what they are trying to achieve. We have been advocating for greater clarity on the environmental ambition that the common frameworks are trying to achieve.

In relation to the TCA, the common framework discussions did not cover the issues that we have talked about today regarding non-regression, rebalancing and so forth. I would hope that subsequent discussions on the common frameworks this year, before they are finalised, might take that into account and address the kind

of issues that we have talked about, such as how devolved Administrations' different approaches to an environmental issue could be affected by compliance with the TCA. Most of the common frameworks reached that provisional position before Christmas, which was before many people saw the agreement. It is a topic for stakeholder involvement on the common frameworks this year.

That is probably all that I can say. As we said earlier, many of the issues are more to do with intra-UK relationships than the agreement as such.

The Convener: I will bring in Professor Reid to make a final point, then we will have to move on to our next panel of witnesses.

Professor Reid: The provisions in the agreement on good regulatory practices would fit very nicely with a proper common framework agreement on how common frameworks are further developed and consulted on, and the way in which the UK is presenting a single regulatory framework to the EU. However, again, the experience has been that we really do not know how seriously the good regulatory practice provisions are going to be taken and how the UK Government is going to be able to fulfil its obligations when it does not control the regulatory activity in several areas that are covered by the agreement.

The Convener: Thank you all for your time this morning. It has been a very helpful session.

I suspend the meeting for five minutes to allow for a change of witnesses.

10:29

Meeting suspended.

10:35

On resuming—

The Convener: We continue with evidence on the environmental implications of the UK's exit from the EU. I welcome our second panel of witnesses. Jim Martin is the chair of Environmental Standards Scotland, Lisa McGuinness is deputy director and head of compliance at Marine Scotland, Robbie Kernahan is director of sustainable growth at NatureScot, and Terry A'Hearn is the chief executive officer of the Scottish Environment Protection Agency.

I have an opening question about your relationships with the trade and co-operation agreement. First, though, I note that I appreciate that SEPA had significant operational difficulties over the new year as a result of a security breach of its systems. My question is for each body that is represented on the panel. What analysis did you

undertake and what advice did you receive about the EU-UK trade and co-operation agreement?

Jim Martin (Environmental Standards Scotland): As you might imagine, we are in an early stage of developing Environmental Standards Scotland, given that Parliament finished discussing the European Union (Continuity) (Scotland) Bill only on 22 December and the act received royal assent only, I think, 10 days ago. However, we made informal early contact with the European Commission to try to get some understanding of its expectations going forward. I have a meeting scheduled next week with the chair of the office for environmental protection for the same reason. We are beginning to analyse our obligations under our legislation to keep under review the impact of international agreements on the Scottish Government, public bodies and environmental processes in Scotland.

In six months I will be able to answer your question more fully, convener, but the act having received royal assent only recently, it is a bit early for me to answer it.

The Convener: What issues will you prioritise in those meetings?

Jim Martin: In the first instance, the meetings will be about working out how we will work together. One part of that is about what we think the TCA's implications are. For example, in article 7.6 of the TCA, there is a commitment for the EU and the UK to

"co-operate on the effective monitoring and enforcement of the law with regard to environment and climate",

but there is also a commitment to regular meetings between the EU and relevant "supervisory bodies" in the UK. We need to understand how ESS will fit into that. I regard ESS as a significant supervisory body in the UK, so I would expect our organisation to have a role in those EU meetings.

That is the kind of area that we are looking at just now in relation to the practicalities of how we engage. Thereafter, the organisation will have to work out how we will monitor those aspects as we go forward. That is an early part of our work plan.

Lisa McGuinness (Marine Scotland): We have seen a significant increase in statutory powers and obligations, as well as in our non-statutory roles. We are undertaking significant analysis of that, which will take time because of the scale and complexity. There are more than 80 powers in relation to marine policy and around 500 obligations that were previously undertaken by the European Commission or member states that have been transferred to us. We are continuing to evaluate and we are seeking to understand the implications in terms of the regulatory activities that we need to undertake. I hope that that gives

you an idea of the scale and complexity of what has been transferred.

Robbie Kernahan (NatureScot): It is fair to say that we have been preparing for a future outside the EU and developing a host of things for several years. The trade and co-operation agreement has not had any immediate impact on the work of NatureScot. There are lots of interesting issues about level playing fields and what the agreement does and does not state, and there is still lots of uncertainty about how the agreement will work in practice, some of which we have explored this morning. For the immediate future, however, NatureScot has probably gotten off relatively lightly, compared with some of our regulatory colleagues. I look forward to the discussions this morning.

Terry A'Hearn (Scottish Environment Protection Agency): We have two sources of information. One has been work with Scottish Government officials, who have been advising us on the analyses and work that they have been doing. The other source is our regulation of 34 sectors of the economy. We are working mainly with trade associations in order to understand what they see as being the likely impacts at this stage, although it is very early. As an operational agency, that source of key information will help us to understand what the impacts might be.

Convener, I thank you for your opening comment acknowledging that I might have a little bit of trouble answering some of the questions; it is much appreciated.

The Convener: I imagine that you all listened to the previous panel of witnesses. Did you recognise any of the potential issues that those experts threw up? Are they the sorts of things that you are hearing as you engage in your analysis with your stakeholders and partners and the other people that you have mentioned?

Terry A'Hearn: I might frustrate committee members during the morning because, as has been said, these are very early days. Some of the things that were talked about during your previous evidence session have certainly been raised as potential impacts or implications, but it is hard to know whether they will happen.

The important thing for us is to be working with Scottish Government officials, the people whom we regulate and those with interests, including environmental and non-governmental organisations, so that we can be prepared and are not caught unawares if the impacts and implications come up.

The Convener: Okay. We will move on to the detail of this morning's scrutiny and analysis. Finlay Carson has questions about the level playing field and rebalancing provisions.

Finlay Carson: Some of the written evidence that the committee has received from stakeholders, and some of what we heard in the earlier witness session, highlighted uncertainty about what levels of regulatory divergence would be regarded as acceptable or unacceptable, how disputes would be triggered and so on. What are the implications of the level playing field and rebalancing provisions for environmental standards across Scotland and the UK? Do they mean that there will be constraints that either reduce or enhance environmental standards?

Jim Martin: I listened carefully to the experts in the earlier session, which was useful for me because it informed the agenda that we will need to create for what we monitor and assess as we go forward.

The TCA is throwing up a number of issues that were perhaps not originally in people's minds when Environmental Standards Scotland was created. However, we have an obligation to monitor international obligations, and I think that the level playing field provision falls within that. One of the areas that I think we will want to look at in the future is therefore the implications and impact of that.

I am sorry that I cannot be more precise than that at the moment, but I assure the committee that the matter is definitely on our agenda.

Finlay Carson: Terry, is there anything with regard to the implications of the level playing field that will constrain environmental standards?

10:45

Terry A'Hearn: Again, it is hard to know at this stage. We take Scottish environmental law—which is at this point, as all committee members know, largely a translation of European law—and we try to apply the standards that exist on the day fairly to everybody. In the first few weeks, we have not come across any issues, so it is hard to know whether we will or not.

The main point that we would always make to anyone is that we must be very strong in saying that the law is the law, and we will apply it. If other issues are then raised, we will have to deal with them as they arise. No such issues have come up. If any come up, that will be a matter for the future.

I should also make the point, which was made by witnesses on the previous panel, that we need to work closely with the other environmental regulators across the UK. If, for example, standards were to diverge, we would need to make sure that we understood what we were doing and what they were doing, and that we were aware of businesses that operated across different parts of the UK. However, I would not back away

from the fact that we have standards here in Scotland, and our job is to apply them.

Finlay Carson: I will open up the discussion to the other members of the panel. What are your views on the governance and supervision arrangements in the agreement? Much of the discussion with the previous panel was about how the devolved nations work with the UK with regard to trade deals and so on. How should devolved interests be represented?

Lisa McGuinness: The TCA and the level playing field bring opportunities and challenges. By its nature, marine protection is fairly heavily regulated and legislatively complex so, if there is an area where we can simplify those measures and cut through unnecessary bureaucracy without impacting on the environmental outcomes, we will do that. We are certainly trying to work across Marine Scotland and with other Administrations to make sure that we are supporting the compliance strategy.

We hope that the policy of minimising divergence from existing EU standards will mean that we are able to maintain the highest possible regulatory standards while minimising trade barriers and supporting Scottish companies to continue to trade with the EU. The EU is a very important market for Scottish companies, given that 77 per cent of our seafood is exported. One of the potential challenges that we face is that Scotland will not be able to contribute our expertise directly to the delivery of the EU goals, although we will work in close partnership with the EU and other neighbouring countries, as we have done in the past.

There is an important issue around governance. The new responsibilities will form part of Marine Scotland's core business and we will incorporate them into our normal business plan. That will be reflected in our engagement in future. We expect those additional legislative requirements to come through in the next parliamentary session, as Marine Scotland starts formally to exercise the role that was performed by the Commission. We must continue to work closely with the other fisheries administrations across the UK when it comes to management measures and other things.

Obviously, it will remain appropriate for the UK Government to have to legislate on fisheries and marine protection on behalf of all four fisheries administrations, but that will involve the consent of the Scottish ministers and there will be consultation.

We want to continue to learn from what we have done in the past. We will continue to monitor and learn from other Administrations, whether in the EU, Norway or the Faroes, in the way that we have done so that we can continue to enhance the

marine environment. At official level, we continue to work on the governance that we have across the four UK Administrations and with the EU.

Finlay Carson: Robbie, how do you think that devolved interests should be represented?

Robbie Kernahan: It is early days. A system where the four Administrations come together to work on an agreed UK position in advance of any discussion with the EU has to be the preferred approach. As for how easy that will be, we will have to wait and see. As we heard from the previous panel, much of the negotiation—round-the-table discussions and dispute resolution if need be—takes place in a political arena rather than a legal one.

The challenge for us is how best we can ensure that the Scottish voice is heard. Whether that is done through an expert panel or through any of the arbitration processes, it is important that we, as a regulator in Scotland, can work closely and share experience with other the devolved Administrations and their advisers—which, of course, we do. Our role is to continue to support Scottish Government colleagues as and when the relevant conversations take place.

We are already a member of a number of interagency groups that are examining in detail the evolving policies across the four countries, and that needs to be fed into any discussions or supervision arrangements under the agreement. However, there is still quite a lot of uncertainty as to exactly how that should and will work.

Finlay Carson: Terry, would you like to comment on that?

Terry A'Hearn: When I arrived in Scotland, I was impressed that the relationship between SEPA and our sponsor, the Scottish Government, is such that the natural approach is for the Government to involve us in policy discussions. If they are UK-wide, the Scottish Government works with UK counterparts. That will work as normal, and how well it works will be determined over time.

Our position is similar to Marine Scotland's in that we work closely with our European counterparts. The chief executive officers of all the European environment agencies meet twice a year, and I co-chair the better regulation working group with the CEO of the Irish Environmental Protection Agency. That is just one example of our European connections, which are very strong. There is a long tradition of that at SEPA, as there is at many other Scottish agencies.

Those two key mechanisms represent the way in which we will continue to work. We have prioritised our relationships at various levels across Europe over the past couple of years. We always kept them very strong, but with the

departure from the EU we have made them an even higher priority, because we need to have that connection in order to keep sharing best practice and learn about where things are going. That will put us in a better position to have input to the processes in Scotland and the UK.

Finlay Carson: You touched on the relationships that you continue to have. With the role that you play, do you see the regulators having a formal or informal monitoring role to look at future developments in EU law?

Terry A'Hearn: Those relationships are pretty strong now. Given the relationship that we have with our sponsor, the Scottish Government, if we bring together its relationships with people in Brussels and ours with our counterparts in the other agencies, those two sets of relationships put Scotland in quite a strong position. How formalised those relationships should become is a matter for the future. The key thing is that we will maintain the relationships through the mechanisms that we are in, and we will use them to best effect as the new system unfolds and works itself out.

Mark Ruskell: What has changed for you as regulators since 1 January? What have the implications been? I put that to Lisa McGuinness first, because you have had—I will put it this way—a few challenges with shellfish exports.

Lisa McGuinness: Yes: a fairly significant amount of work had to take place in the run-up to the TCA being agreed, as has been the case since 1 January. There has been a lot of work on deficiency fixing in transposing EU law into domestic legislation. That has been a mammoth task, spanning a number of policy and operational areas.

As I mentioned earlier, there are 86 powers that we need to assess and work through, but we hope not to have to rely on them in the longer term. About 500 obligations have also been transferred across from the European Commission or member states, which vary in complexity. Although we might already be undertaking some of the obligations—such as licensing—others will be substantially new with regard to how we do things.

There have been significant implications for resourcing our teams. You picked up on the issues relating to trade. Given that we are the starting point of the supply chain, there have been significant impacts on our operational teams, which have had to fill a gap in education and in supporting guidance. We have had to help people understand the changes to processes and the conditions that are now in place that allow EU vessels to operate in Scottish waters and that allow our vessels to operate in EU waters, including what it means to export products from

Scotland to the EU, whether via Northern Ireland or elsewhere.

A significant amount of works needs to be done at pace to license EU vessels to allow them to work in Scottish waters, and the verification of UK vessels that are operating in EU waters had to be done for the first time. There are benefits to that—there is a level playing field; we are all working to the same conditions on licences—but it has been very new for the vessels that are operating.

We have also seen an increased need for controls and administration in relation to matters such as port state control, which has had a significant impact on the workload of our fisheries monitoring centre, which handles that, and on the time that it takes to deal with and provide those authorisations. There has also been a significant amount of reworking of applications, which has involved a lot of to-ing and fro-ing.

As you rightly highlighted, there has been an impact on our business due to seafood trades and the impact of the TCA on our ability to trade quickly and easily, and we have had to redeploy staff to provide support in that area. We have also had to support the administration of the seafood producers resilience fund to support the businesses that have been affected during the early period.

The impact has mainly been in relation to providing support and education, getting our heads around what it means for us as the authoriser and understanding the knock-on effects on other aspects of our work. In Marine Scotland, we have the benefit of being core Scottish Government, so we are close to some of the other groups to which things that are happening; we also have the policy and scientists sitting alongside us as the regulating body.

There have been significant increases in workload as we all try to understand what is going on. It is still early days.

Mark Ruskell: What do you anticipate that the resource requirements will be for that work? Is it about redeploying existing staff, or do you think that there will be significant resource implications?

Lisa McGuinness: It is a mixture. As mentioned previously, a lot of planning and work was done in advance to put us in a strong position. In the run up, we brought in additional resources, and we tried to increase the capacity and capability of the assets that are available to help us to monitor and protect the marine environment.

We managed to bring in additional staff on both a temporary and permanent basis. We recognise that we will need them at least in the short term while things—I hope—smooth out and we all get to grips with the situation. Until we have managed

to work our way through all the additional obligations and what they mean in this brave new world, I do not think that we can put a finger on what the resource implications will be in the longer term. However, we continue to monitor and flex resources in the best way possible according to the priorities that we see.

Mark Ruskell: SEPA has had considerable difficulties more generally due to the cyberattack. How have you managed to implement the changes that have come as a result of the agreement?

11:00

Terry A'Hearn: The most obvious change is the emissions trading scheme, which is—*[Inaudible.]*—to the UK and we administer for Scotland. We got that in place before Christmas. We received applications that we are unable to access because of the cyberattack; we will find ways to deal with that.

There are a couple of other changes to mention. Chemicals regulation was mentioned in the previous session. We are working with the Scottish Government to understand the impacts in that regard. We have not seen any significant change with the transfer of waste, including in relation to the Northern Ireland issue, which we are working on with officials from the Scottish Government and the Department for Environment, Food and Rural Affairs.

On environmental law and legislative change for the ETS, we think that we are managing the other couple of key issues; there are no significant impacts so far.

We are still in the early days, so we need to keep in close contact with the industries that we regulate. Some are having challenges as they adjust to the new arrangements, which might affect waste disposal or stocking rates. However, we have not seen any significant impact yet. It is important that we keep in close contact with them as the new trading arrangements are ironed out, so that and can make adjustments.

Mark Ruskell: It seems that NGOs, stakeholders and industry have concerns about UK REACH. Has that issue come up in your discussions with industry? There have been concerning calls from industry for deregulation. There also seems to be an issue about access to databases, with calls for a Swiss model to be brought in, whereby there is access to European data but decisions can be made with some independence. I do not want to draw you on political questions. However, as a regulator, do you have concerns about the way in which UK REACH is, or is not, bedding in?

Terry A'Hearn: The key issue that comes up is the practicalities of the system. We have a good, long-term working relationship with the chemicals industry and its trade association, the Chemical Industries Association. It has made statements, but its views about how the system should work are for Parliaments to work out, as you said. As you would imagine, our focus is on the practicalities. So far, although it is early days—I am sorry to keep saying that, but I have to tell you what we are experiencing—we are finding things manageable.

The industry talks a lot about cost and complexity. That is not for us to judge, because it is for industry to work with Governments and Parliaments about the trade arrangements. Our focus is on practicalities and how they influence environmental outcomes. At the moment, we think that that is working out okay. I apologise if I sound like a broken record, but it will be worked out as we go.

To reassure you about our input, our focus will be on the environmental outcomes. People can put forward different views on how environmental outcomes can be delivered in a regime. We always take the approach that, where the law sets outcomes, we consider what might be the most practical ways in which the outcomes can be delivered, and whether they are transparent for people with an interest, which includes us as a regulator, those who judge us as such and the businesses that need to comply with the law. That will be our focus when the debates take place.

Mark Ruskell: In the previous session, Professor Gemmell underlined the need for monitoring, compliance and understanding the environmental data. How will you pursue the compliance issue with the EU and other countries to understand what the impacts might be?

Terry A'Hearn: Under the one planet prosperity approach, we had a programme to consider how we move to the next phase of compliance, assurance, verification and monitoring. Even at the simple level of technological developments, we can take a lot of opportunities—we have been exploring things such as environmental DNA testing.

As a regulator, I think that good law that helps when administering is outcome focused and transparent—they are the two key things. I keep coming back to our focus. There is existing Scottish law. For a level playing field, what the Parliament, the public, NGOs and businesses expect is that it is clear whether the people that we regulate are complying. We will continue to look at how we improve that, and that would have happened if the UK had stayed in the EU.

As I said in response to an earlier question, we will continue to work closely with our European counterparts on best practice and new innovations in compliance and monitoring. There is clear direction in that most of the laws that we administer are pretty similar to or the same as a lot of EU laws. It is not that we each need to monitor in the same way, but we need to have the same level of assurance from and effectiveness of monitoring and compliance regimes.

That is why links with other EPAs are important. When we get together and someone says, "We've done this," we all learn from that, and we can describe what we are trying in Scotland. We often agree to trial something, which is where my co-chairing of the regulation working group helps, because we can agree to trial things in different jurisdictions. As I said in response to an earlier question, that will remain a strong component of the way in which we work.

Mark Ruskell: I do not know whether Robbie Kernahan or Jim Martin wishes to respond; I appreciate that it is early days for ESS's relationship with the regulators.

Robbie Kernahan: I am happy to make a quick observation. From a regulatory lens, little has changed since 1 January, largely because quite a lot of our work paved the way for ensuring that European habitats and species were afforded similar levels of protection and for ensuring that the legislative mechanisms were in place.

The one thing that has changed, which has no significant resource implications, is the means by which we monitor or provide information that relates to the special areas of conservation and special protection areas in Scotland and the UK. Responsibility for that has been transferred to the Emerald network database, which was established under the Bern convention. We still have an ecological network that is made up of special areas of interest—[*Inaudible.*]*—*the rest of the UK and we continue to meet our obligations. From the regulatory and resourcing points of view, no real change has resulted from the TCA.

Jim Martin: Mark Ruskell is right that it is early days for us, but a benefit of the TCA coming when it did is that it has enabled us to think through the groundwork for our plans. We are interested in working out whether such areas will be up front for Environmental Standards Scotland to consider, and, if so, how. We are also considering how we can best liaise with the EU and regulatory bodies in Scotland to understand their impact. It is early days, but I am glad that the TCA has come at the beginning and not in the middle.

Mark Ruskell: Will UK REACH be on your work plan?

Jim Martin: I do not know yet. We are sitting down and thinking about all such things. My initial hope is that we will put together an interim strategy in the next few months, on which we will consult. I hope that that strategy will have the range of activities that we expect Environmental Standards Scotland to pursue in its early days. By producing the strategy, engaging with people and discussing it, we will come to a work plan that allows us to meaningfully prioritise what we will do with our limited resources.

Claudia Beamish: I thank the witnesses for their written submissions, which have been helpful in framing this discussion. Although I respect that the policy context will be developed in discussion with a range of stakeholders and communities by the Scottish Government and Parliament in the next parliamentary session, I want to broaden out the discussion. Would any of you like to comment on what the priorities are for future collaboration with the EU on environmental standards and the climate and nature emergencies? How will the regulatory bodies that are before us today collaborate with EU organisations? Will that be impacted by the TCA? If you have already highlighted that, please just say so. I ask that Jim Martin responds first.

Jim Martin: We have already begun informal discussions with the EU to bottom out how we can get access to information and data on the development of environmental law, and also to learn about its monitoring and data collection regimes, so that we can begin to put in place something that might replicate some of the work that the European Commission has done.

I do not think that the TCA is very helpful in that it does not define the role of devolved Administrations in the detail of the agreements. As I mentioned, article 7.6 says that there is a need for consultation with the supervision bodies in the United Kingdom. I am keen to understand what the European Union, Scottish and UK Governments and the OEP's views are on that. That discussion with the EU will help inform our approach to how we continue to be involved in that area of scrutiny.

During these early stages, we are trying not only to understand the extent to which we can replicate the European Union functions that we need to, but to understand what the UK Government and EU meant by some aspects of the TCA. That will undoubtedly impinge on our work. To do that, I will speak to the chair of the OEP next week. I will also liaise with our colleagues in Wales and Northern Ireland to get their views, and find out whether there is a collective view and whether there is a way in which we can work together.

Claudia Beamish: I appreciate that these are early days and that this is a deeply complex

political and legal landscape but, of the issues that are likely to come before you, what priorities will you need to focus on?

Jim Martin: Our first priority will be to ensure that we are set up properly and that we fully understand the extent to which Parliament intended us to act. In other words, we have to work out what you guys meant in the legislation that was passed. That will not be easy. That is our number 1 priority. We then have to put in place credible monitoring and policy positions that we can follow and work out how we will investigate the complaints that come to us.

We are concentrating on those aspects rather than on trying to anticipate which areas of concern might come to us. That would be foolish because, inevitably, if we come up with a top four or five areas, the sixth will be the one that hits us first and takes up most of our resources.

At the moment, I am afraid that the only answer that I can give is that we are in the preparation and planning stage. I will happily come back to the committee in a few months to tell you where we think those areas are.

Claudia Beamish: Thank you for that. I will go to Lisa McGuinness on marine issues.

11:15

Lisa McGuinness: It will not surprise the committee to hear that many of our priorities are very much in that operational space at the moment. For example, we continue to work through the negotiations to make sure that we have better regulation of species, areas of operation, accessibility to the waters round about Scotland and allocation of stocks in order to enhance sustainability. Engaging the EU on all that is a priority and an on-going piece of work.

As we have heard a lot about today, it is about that on-going monitoring capability and sharing of information and data. We have been able to seamlessly transition a lot of our data exchanges and the way we monitor across EU, UK and Scottish waters. We want to see that level of monitoring and sharing of information continue.

From a compliance strategy point of view, we work very closely with all the countries that operate in and around our marine environment. We want to continue to engage in that way and work together when infringements are found, when illegal activity may be taking place or when licence conditions have not been adhered to, for example, by working with the flag state to take action where appropriate.

The priority areas for us at the moment are therefore very operational. A lot of the regulatory legislation has transitioned across if not easily,

then without changing too much just now. However, as we start to understand a little bit more about what the TCA means, it will enhance a lot more our understanding of where some of those priority areas of discussion may take place. We are already touching on areas such as marine protected areas, more offshore environments, and large vessels operating in and around our waters, which are the sort of areas that we need to start focusing in on. We are very focused on operational issues just now, but we are probably moving into that more policy and strategic space.

Robbie Kernahan: As we have touched on, keeping pace on biodiversity and climate change will be increasingly important, especially this year. During the previous evidence session, I think that Lloyd Austin referred to the EU launching its biodiversity strategy for 2020 to 2030, which commits to actions on a number of areas, such as a larger EU-wide network of protected areas, an EU nature restoration plan and the introduction of measures to enable the necessary transformation.

We want to work closely with both the UK Government and the EU on all those areas in helping the Scottish Government to prepare Scotland's new biodiversity strategy, which will be produced following COP15—the 15th meeting of the conference of the parties to the Convention on Biological Diversity. Building consensus around the ambitions of both COP15 and COP26, on climate change, is crucial. Those are very obvious priorities for collaboration for us. As to how we will do that, we will continue to work with organisations from EU member states on projects that will further our thinking on halting biodiversity loss. Reference was made to the new green deal and work on green infrastructure, and we already have good connections in relation to a number of the strands in that.

As Terry A'Hearn has alluded to, we will continue to work with collaborations and organisations to gain experience on specific projects in relation to tackling the big issues that affect nature and landscapes. We want to continue to do that. Both COP15 and COP26 provide good opportunities to showcase a lot of that work, which we are excited about.

Terry A'Hearn: There are many matters on which we will continue to work with Europeans. The one big priority is the challenge of how we continue to deliver against both the first-generation set of directives or policies and the new set. A great deal of the first set—certainly with regard to environmental protection regimes—were about specific and often local pollution issues.

The second generation concerns systemwide changes—biodiversity collapse, climate emergency and so on. I will give the practical example of waste water treatment and Scottish

Water. We would look at the water framework directive with regard to a river or a loch. If the monitoring showed that the water quality did not match the parameters, we would feed that into the capital programme development for Scottish Water to say that it should have a new treatment plant or an upgrade, and Scottish Water would weigh that up against everything else. Waste water treatment plants make it easy for people to waste water. In the decade in which we need to dematerialise, decarbonise and radically change how we use the environment, is that the right technology for the future? I am not suggesting to the committee that we will be asking Scottish Water to turn off all the treatment plants tomorrow, because those plants have a huge role in the delivery of water quality.

On the innovation that we need, I will give the example of Perth, which has an ambition to become the most sustainable small city in Europe. I have talked to Scottish Water's senior team about that. How do Scottish Water, SEPA, non-governmental organisations and a range of players sit down with Perth and think about how we could develop, redesign and change Perth so that it does not produce any waste water? If we could do that, either we would not need a treatment plant at all or we would not need one that was anywhere near as big as what we have.

I have been completely clear with Scottish Water that achieving decarbonisation and dematerialisation in the way it works and reducing water use, which are all major environmental challenges that we need to tackle, will not be done at the expense of water quality. The big challenge that we need to work on—working closely with our European colleagues will be critical, because they all face the same challenge—is how to deal with both the first and second generations of environmental laws and policies. That will require a huge amount of innovation, which works best when we are sharing ideas, testing and trialling things and combining things.

I have referred a number of times to our relationships with our EPA partners across Europe. For the committee's benefit, I should also say that the door is very open to us. In my experience, Scotland has a very good reputation, and it has not been the case that we have started to be shut out of processes. In fact, I was appointed to the second committee that I co-chair not long before Christmas. We need to focus on the big challenge of bringing together the two generations of environmental laws and ensuring that achieving the big things, such as tackling the climate emergency, is not done at the expense of continuing to deliver local and specific environmental outcomes.

Claudia Beamish: That is helpful.

Mark Ruskell: I will come back to Robbie Kernahan's point about biodiversity and working with European partners on that. NatureScot's submission refers to the EU farm to fork strategy. There is now a new CAP in place, which has targets on organic farming and on pesticide reduction. Are you looking at aligning with those elements of the new CAP, to meet biodiversity objectives?

Robbie Kernahan: Work is on-going to develop that future rural policy approach in Scotland, and we are providing input to the Scottish Government to help to develop the transitional arrangements in the Agriculture Act 2020. NatureScot has continued to lead pilot projects to test some of those innovative approaches to delivering environmental outcomes on farms and crofts in Scotland. The way in which we align with some of those EU strategies for a fair, healthy and environmentally friendly food system is important, so it comes back to keeping pace and the challenge of keeping track of everything that is coming out of the EU and trying to interpret and apply that in the Scottish context. We absolutely want to do that, and we hope that we will do that.

We are beginning to see some of that emerge, even in the appetite for farmers—[Inaudible.]—groups looking to reposition agricultural subsidies and what that will entail, and some interesting things are being built in relation to metrics and monitoring. In a roundabout way, my answer to that is yes, because looking at farming systems through a climate change lens, we need to develop our policy thinking much more and inject a little pace and urgency into some of the pilot projects if we are going to be ready for—[Inaudible.]

Mark Ruskell: Is there a danger that we end up with a gap, particularly given the reductions in agri-environment and climate change funding this year? Where will the innovation come from to continue to stay ahead of the curve and keep aligned with Europe on those issues?

Robbie Kernahan: The challenge for us all in Scottish agriculture in relation to those schemes is to make sure that we get the balance right between the future of agri-environment payments and what that entails. There is scope for an awful lot of innovation in Scotland in trying to find the balance between environmental outcomes, sustainable food production and all that that entails. I do not underestimate the challenge of all that; that is a huge priority for us in rural policy.

Stewart Stevenson: I want to explore—not at huge length, I suspect—the development of common frameworks, particularly how that work relates to the United Kingdom Internal Market Act 2020. I will start with Lisa McGuinness, not least because of my constituency interest in fishing but

also because I suspect that I have heard of more progress being made there. I have a broad question: how will we know that something is a common framework, because I do not think that many of them have headings that say that?

Lisa McGuinness: I will try to answer that question, but it would probably be better answered by my policy colleagues who are a bit closer to the issue. I will answer in relation to the Fisheries Act 2020, because that has quite a good structure. In the lead-up to that act, we participated in the common frameworks processes very much in good faith and we are clear that those arrangements are the best way of managing the policy differences and respecting the part of devolution that is currently subject to EU law. As has been touched on, the approach to the Fisheries Act 2020, when we were fully involved in influencing the direction of the act, what should move across and how that should represent the needs of Scotland, has been well rehearsed.

Without getting too much into the politics of it, we have some concerns at official level about how the United Kingdom Internal Market Act 2020 potentially threatens the framework process from a negotiation and agreement perspective. We want to have an equal voice in that decision-making process, but from what we understand about that act, it looks as if it gives the UK Government the ability to impose regulatory choices on Scotland and set standards that Scotland would have to accept, which takes away some of the choice in relation to the agreements that we spoke about earlier that we would want to honour with the EU and others.

A bit of work needs to be done to understand exactly how the internal market act will work in that situation, but we will, certainly at official level, work with colleagues from across the UK and beyond to try to get that equal status in negotiation and make sure that we have the relevant standards in place for Scotland, and the UK where necessary, to ensure that we continue to meet the high standards that we as regulators can enforce and make sure are being implemented. I apologise for not being a policy person, but I hope that that answers your question.

Stewart Stevenson: Thank you. I will ask Terry A'Hearn and then Robbie Kernahan essentially the same question. Lisa McGuinness seemed to identify a tension between the development of common frameworks and the United Kingdom Internal Market Act 2020. The first part of my question is whether that resonates with you, Terry and Robbie. More generally, how is the whole project of common frameworks going? I heard previously that fishing was a relatively good example of their development, but I now hear warnings that that may be compromised by

internal markets. Does that resonate with you, Terry?

11:30

Terry A'Hearn: I do not have a huge amount to add to what Lisa McGuinness said. They are policy questions and we will work through the policy arm of Government on the common frameworks. I will add one point, which is that the most effective thing to do is to shift the debate from less or more regulation and lower or higher standards to outcomes. If businesses want to argue for lighter regulation, for example, I am comfortable as long as the outcomes are the same and the transparency and sanctions are the same. We should always look to have the regulatory burden to achieve an outcome as low as possible while providing high levels of assurance and confidence.

I am not saying that defining regulation and the common frameworks as being about the outcomes is a panacea, but it is a more productive way to frame the discussion and it is certainly how we would focus on it in our small contribution to the debate through the policy arms. The more the common frameworks are about environmental outcomes, the less danger there is of lowering or weakening environmental standards and outcomes. I emphasise again that, as an operational agency, we will have our input but they are policy decisions that need to be made. Rather than just saying that, however, I am trying to explain the philosophy and approach that we would bring with our contribution.

Stewart Stevenson: That is helpful. Can we hear from Robbie Kernahan and finally from Jim Martin, as the new kid on the block?

Robbie Kernahan: We have touched on the issue in previous evidence sessions. There are uncertainties about how the act will work in practice—the effect on businesses and whether we will see environmental standards diverge between the UK nations in the future. NatureScot is not directly involved in the development of any of the common frameworks. However, as Terry A'Hearn said, we are obviously happy to support the Scottish Government as and when required. There is not much more that I can add.

Stewart Stevenson: That is fine. Jim, how much do common frameworks come into your purview, how are you contributing to them and how do you want to contribute to them?

Jim Martin: I do not know yet. I am listening carefully to what people are saying. There are areas where we will obviously want to monitor things, but I would rather keep my powder dry just now, if that is okay.

Stewart Stevenson: That is fine by me, Jim.

The Convener: Next we will address the replacement of EU funding streams.

Angus MacDonald: We discussed with the previous panel that the UK can no longer automatically participate in the CAP, LIFE funding or the structural funds, although we are, thankfully, taking part in horizon Europe for the period 2021 to 2027. What do the panel members believe are the implications of the agreement for the formulation of replacement funding programmes, including any rules on subsidies and state aid? Robbie Kernahan, you have covered the issue in some detail already, but do you have any further comments on subsidies and state aid?

Robbie Kernahan: I will reflect on what we provided by way of written evidence. We welcome participation in the horizon Europe programme, which provides access to significant large research and innovation programmes and will help with some of the collaboration and innovation opportunities for Scotland across the various missions, whether that be in relation to climate change adaptation, healthy soils, or food—some of the things that we have touched on. We probably need to maintain close collaboration with European partners and horizon Europe provides a really good opportunity to do that. It will encourage participation and shared experience from a range of public and private sector organisations, which is to be welcomed.

To a certain extent, we still have a sense of frustration about the lack of certainty about how some of the other funds from the UK prosperity fund will be administered and shared. We have relied heavily on the natural and cultural heritage fund to deliver nature outcomes through green infrastructure strategic intervention. It would be really nice if we were a little bit clearer about how those replacements funds will be administered, sooner rather than later.

I was interested to follow the first panel's discussion about the relationship between funding and state aid. There is something there about moving forward in an agricultural sense, if we are actually going to invest public money for public goods. Such incentivisation or subsidy might have less material impact on or risk of confusion with state aid.

One aspect that is emerging and still needs to be thought through is the concept of blended finance, where there is an increased market and opportunity for private investment in delivering public goods. Whether that relates to woodland creation or peatland restoration or other aspects of delivering services from nature, the interplay between public and private investment is in its infancy. That is a priority for us to work through if

we are going to see the nature-rich future that we need, because it will not come directly as a result of Government funding. We will need lots of private investment, so we and the Government need to work closely on the marriage between those two things during the next 12 months.

Lisa McGuinness: I will not repeat what Robbie Kernahan has just said—we are very much in agreement that we will need to look differently at investment, how we support industry and take an environmental approach.

There is still quite a lot of uncertainty about what the replacement for lost EU funding will look like, and what levels of replacement will come from the UK Government. For example, we have been told that £14 million will come to fisheries, split across the environment and rural economy budgets. We have got £6 million coming for data and enforcement requirements, which links back to what we used to get from the European maritime and fisheries fund for control and enforcement. We have also got some wider support coming, but again it will be restricted. There is still a lot of uncertainty.

We have also been told about the shared prosperity fund, but that links to some of the comments about the UK Internal Market Act 2020 and how the fund will be provided for and delivered UK-wide. It is still very early days with regard to understanding what that funding will look like, the form that it will take and how best we use it. I certainly endorse what Robbie Kernahan said about how we work together and closely with the private sector and others to make sure that we are investing in the best way possible across a range of areas.

Angus MacDonald: What involvement have you as regulators had or do you expect to have in the discussions about replacement funding and any anticipated role for agencies in disbursing the funding, including in light of recent budget announcements?

Lisa McGuinness: Marine Scotland is in a slightly different situation because we are a core Scottish Government directorate. Our policy colleagues and others, such as our funding leads, have been right at the heart of some of the budget discussions. As the operational arm, I have been feeding in to say where I would be looking for investment or what we would be losing out on from the EU.

From a Scotland perspective, we have been quite heavily involved in some of that discussion, and we have been working with colleagues across the UK to try to get a handle on things and get a bit more certainty in that regard. However, it is early days, so the position is still not as clear as perhaps it could be.

Angus MacDonald: Terry A'Hearn, have you been involved in any discussions regarding replacement funding?

Terry A'Hearn: Unlike Marine Scotland and NatureScot, SEPA does not have a big tradition of accessing European funds, although we have accessed some funding—for example, to run the LIFE SMART waste project, which is still completing. It is not as big an issue for us in terms of direct funding, but—as others have touched on—it is an issue in other areas. For example, organisations that we work with, whether they are inside or outside Government, are facing those funding challenges, and they have to find new ways forward. We will have to work with them on those issues—I highlight once more that we would work through our Scottish Government sponsor department to discuss how replacement funds would work.

Secondly on the broad topic of EU funding, we have been a bit creative about how we have accessed some of the benefits of it. The LIFE SMART waste project, for example, involved Scotland and a few other European nations, and it developed a set of tools for thinking about how to better regulate waste and tackle issues such as waste crime. If we cannot be a partner in that work, the lessons can still be shared through the other European fora in which we take part; I keep referring to the CEO fora that I participate in from the EPA side. Again, that is not as big an issue for SEPA as it is for some of the other agencies, but we would look to have input through the policy process and to find novel ways to share or gain access to the learnings from the European projects in which we can no longer participate directly.

The Convener: We move to questions from Liz Smith.

Liz Smith: My first question is for Mr Martin. You appeared before our committee some months ago, when you were starting to set out what you felt that the priorities should be for Environmental Standards Scotland. You confirmed this morning that you are listening to people and to the debate. If you were to identify the key principles by which you want to operate and see good environmental governance in Scotland, what would they be?

Jim Martin: One principle would be independence from Government and your committee, and from all the bodies that are represented on the panel today. Environmental Standards Scotland is an independent body that can look at matters independently and make its own decisions.

The body needs to be credible, which means that we have to put in place processes and procedures that have the confidence of everyone

who is operating in the sector, whether they are an ordinary citizen, a non-government organisation or a public body. Our boards will meet in a couple of days' time to look at the legislation, and from that we will work out our priority areas of work in order to establish the organisation.

I hope that we are going to be open, and that we will listen and engage. We have already begun to do that—I have had meetings with six organisations so far. We are starting, very early on, to say to people, "Please tell us what you think—we are listening." That is how we want to go about creating our work programme. Does that answer your question?

Liz Smith: Yes, it does—that is helpful.

We would probably all agree with the principles that you have just identified. Leading on from that, when we were debating the EU continuity bill and subsequently, a lot of our constituents have raised issues around what happens if an individual or a community group has concerns about the environment and any breach of the law. The transparency, openness and approachability that you talk about are absolutely key in that respect. How do you feel about the prospect of environmental courts in Scotland to back up the processes? Would you welcome that, given that the Scottish Government has made a commitment to look at it in the future?

11:45

Jim Martin: Can I come back to you on that? My reason for saying that is that, until we have looked at what the scope of the organisation is, and where the limits and the opportunities are, it is difficult to come to an informed view on that. I know that—

Liz Smith: Do you have any ideas about how the process of ensuring that environmental standards are adhered to can be as relevant as possible to communities and to individuals who might not feel comfortable about approaching a big bureaucratic system? There are situations in which individuals and communities feel that they want to protest. What should be the relationship?

Jim Martin: I can work only with the legislation that you have given me. My first priority is to put in place the provisions that the Parliament has given to Environmental Standards Scotland, and then to assess whether there are gaps in that and, if there are, the best way to fill those.

At the moment, we in Environmental Standards Scotland are trying to see whether we can create from the beginning an accessible process in both our monitoring and our investigation functions that will enable us to receive and to listen to concerns. That may mean that we have, for example, to say

to some people that the best area for handling their concerns is with this or that agency. My board decides on that. It is of sufficient importance that we want on our own initiative to forward something, although we have not been set up as an environmental ombudsman to take on individual complaints; however, that does not mean that we cannot listen to individual concerns. The problem that the Parliament has given to Environmental Standards Scotland is on how to balance that.

I am really encouraged that you think that I have the answer to the questions that you guys have been asking, but I do not have them quite yet.

Liz Smith: But you will have them, I hope, in the not-too-distant future.

The Convener: Now we go to the final line of questioning, which is from Finlay Carson.

Finlay Carson: I have a very simple question, which is the same as the one that I asked of the last panel. In future, the UK will be looking to negotiate more trade deals. Are any lessons to be learned about the negotiation and agreement of future trade agreements, and what do we need to look at when it comes to the implications for devolved Administrations, based on the TCA? We will start with Terry A'Hearn.

Terry A'Hearn: [*Interruption.*] I was just waiting for the microphone to come on. It is probably still too early for me to say. The key thing in any such discussions is how to get combined outcomes on the table early. My point is not particularly about the lessons from the recent experience; it is that, for any good policy making or good change in institutional or legislative requirements, the earlier that people can talk about multiple outcomes and how best to achieve them all, the better. I make that as a broad point about trade agreements or anything else.

I am sorry that I do not have anything further to add on that specific recent experience, but I make that broad point as a key lesson in such situations.

Robbie Kernahan: I have a couple of quick observations. Certainly, for me, that interagency engagement is hugely important, both for sharing information and for identifying issues that can be flagged up to our respective Administrations. We need to make sure that we have the relationships with our own Government that allow the identification of issues at an early stage. Listening to the discussion this morning got me thinking, when it comes to experience with the TCA or any future trade agreements, that the Scottish Government recently published "Scotland's Vision for Trade", which sets out some of the principles and values for the trading relationships that we want Scotland to have in the future.

As I understand it, that vision will be used to influence the approach that the UK Government takes in developing future trade agreements with other countries. It needs to reflect the Scottish Government's aims for fair work and inclusive growth. More importantly from a NatureScot point of view, it should be about making the transition to net zero, and it should include a set of indicators on which future trade relationships will be based.

The fact that the planet is singled out as a theme is encouraging for me. It might a bit light on specific—[*Inaudible.*]—but it is something that we can build on. It has not been referred to this morning, but "Scotland's Vision for Trade" was just published in January. It provides a useful reference and framework for us for future discussions about any additional trade deals.

Lisa McGuinness: I want to build on some of the things that we said earlier. We mentioned the Fisheries Act 2020 and the common frameworks that helped to build the governance around it. Similar approaches to any future deals would be really useful, with a common understanding and a common, balanced negotiating position.

Linked to that is the need to ensure that quality and standards are not lost in doing a deal at any cost. That is very much about ensuring that the environmental standards and green credentials are there, and that we are investing in the right trade deals at the right time. It is about the governance around common frameworks and the approaches taken to doing things jointly while not negating standards or quality.

Jim Martin: The main lesson for the UK Government is not to go into trade agreements that come out lacking in clarity. There are areas of the trade agreement that lack clarity. If it were a commercial agreement, I am not sure that it would pass muster. In particular, there seems to be a lack of recognition of the role of the devolved Administrations, of where they have duties and of where they have an impact. There are lessons for the UK Government for future trade deals—and it would appear that we will have many of them in the future: it should take account of the devolved Administrations and it should provide clarity.

The Convener: That brings the evidence session to an end and I thank the witnesses for their time. We will take a short break before hearing from the Cabinet Secretary for Environment, Climate Change and Land Reform.

11:52

Meeting suspended.

12:00

On resuming—

Subordinate Legislation

Single Use Carrier Bags Charge (Scotland) Amendment Regulations 2021 [Draft]

The Convener: The second item on our agenda is to take evidence on the draft Single Use Carrier Bags Charge (Scotland) Amendment Regulations 2021 from the Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, and her officials. I welcome the cabinet secretary; Catriona Graham, circular economy bill manager, Scottish Government; and Gareth Heavisides, circular economy team leader, Scottish Government. Good morning to you all. I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham): The purpose of the regulations is quite simple: it is to increase the minimum charge for single-use carrier bags from 5p to 10p. That will reduce further the number of single-use carrier bags that are sold in Scotland, reduce the environmental harms and littering issues associated with them, and encourage consumers to use sustainable alternatives.

There is widespread support for the proposal. In the circular economy bill consultation, respondents were asked whether the single-use carrier bag charge should be increased to a minimum of 10p, and 80 per cent of all respondents said yes.

It had been our intention to lay the regulations in the first half of last year, but the legislative timetable had to be reconsidered in light of the legislative requirements arising from the pandemic. The most recent programme for government included a commitment to introduce legislation in this parliamentary session.

The increase will also keep Scotland in line with the rest of the UK. On 3 February, DEFRA laid regulations to extend the single-use carrier bag charge to all retailers and increase it to 10p with effect from 30 April 2021. We understand that Wales and Northern Ireland are also considering increasing the charge.

I am conscious that the increased charge, if approved by Parliament, will overlap with the temporary exemption from the charge for home deliveries, click and collect and takeaways. The temporary exemption is a Covid-related measure that will expire on 31 May 2021, so it does not contradict our wider commitments to tackle single-use plastics and other items.

The Convener: Thank you, cabinet secretary. Do members have any questions about the regulations for the cabinet secretary?

Mark Ruskell: I welcome the move, but I have some questions about the regulations. First, will consideration be given to extending the temporary Covid-related exemption measure to September, or is it anticipated that it will run out in May? Secondly, what do you anticipate the impact will be of increasing the charge from 5p to 10p in terms of benefits to climate change reduction, waste, littering and so on? Thirdly, why 10p? Going from 5p to 10p seems to be an obvious jump, but was consideration given to charging 15p or 20p?

Roseanna Cunningham: I cannot possibly answer the first question. The answer to it depends to an extent on where we are in the context of the pandemic. Currently, the Covid regulation is scheduled to cease on 31 May. I guess that we all hope that that can continue to be the case, but I have no inside knowledge of whether it will. I cannot add any more to that.

On the cost of the charge, we consulted on the 10p cost, which got 80 per cent support from respondents. The higher the charge goes, the more the support might begin to drift. It is also a single coin. Those would all be considerations in the thinking. The introduction of the 5p charge led to a massive reduction in the use of carrier bags, so I guess that we are trying not to take a hammer to crack a nut. At the moment, increasing the charge to 10p seems to be a reasonable and widely accepted move, and it means that we will not get into any unnecessary controversy.

In my opening remarks, I mentioned some of the wider benefits. It is important to flag up research on the environmental benefits. The Marine Conservation Society found that, in the two years following 2016, the number of carrier bags found on Scotland's beaches dropped by 40 per cent, and there was a further drop of 42 per cent between 2018 and 2019. There is potential evidence of an increase in what are termed "bags for life"; we will consider further research into that.

We know that there are significant benefits. We have seen them already, and I think that we will go on seeing them. It is worth reminding people that the charge applies not just to single-use plastic carrier bags but to single-use bags. It is not simply about plastic. We are trying to encourage good environmental behaviour overall.

Finlay Carson: I appreciate the cabinet's secretary's response regarding plastic use in deliveries. The exemption came into force in April 2020 but expired in October 2020. Can she confirm that there was a gap in the carrier bag charge exemption for grocery collections and

takeaways between October and the new regulations coming in on 29 January? If there was, can she give us some assurance that, come 31 May, every consideration will be given to the importance of not having a gap in the protection of people who are vulnerable and at high risk, and rely on deliveries from supermarkets?

Roseanna Cunningham: You are asking me about a different piece of legislation. I have said that I hope that 31 May holds. I cannot in any way foresee what might or might not be the case when we are in a brand-new session of Parliament. All that I can say is that the intention would be not to allow any gaps, but I am not in a position to make any kind of commitment.

Perhaps Gareth Heavisides can cast his mind back to the gap that Finlay Carson has identified that might have arisen last year.

Gareth Heavisides (Scottish Government): That is correct, cabinet secretary. The initial exemption regulations ran out on 3 October. At the time, given that we were in a different situation with Covid, it was decided not to extend the regulations. Things were moving back to a more normal footing with deliveries. However, the exemption was brought back in because of the new variants and the increase in the pandemic early in the year.

Roseanna Cunningham: That is helpful. It was not an accidental gap, if that is what Finlay Carson is concerned about. It was not a situation that had been overlooked; a decision was taken in light of what we understood the pandemic situation to be at the time and the way that it was heading, which, across the UK, of course, turned out not to be as optimistic as it might have been. In a sense, that reinforces my caution about 31 May. As much as we hope that that really will be the end of the necessity for the approach, we have already learned that the virus has surprises in store for us, and I do not want to commit myself to something that cannot possibly be committed to.

Finlay Carson: That shows that there was a gap. We went back into what was, in effect, a national lockdown on boxing day, but the decision to extend the exemption was not made until the end of January. We saw some of the highest infection rates from the end of December through January, but there was not quick enough action to ensure that carrier bags for delivery services were exempt again. I would not like to see that happen again. I would like to think that the Government could react to growing infections and extend the exemption if that is needed.

Roseanna Cunningham: That would not have been carelessness; there would have been specific reasons for that. I will need to go back into the progress of that piece of legislation and see

whether we can pin down more clarity of understanding about the process. I undertake to let Finlay Carson or, indeed, the whole committee, if it is interested, know what the timescale for that piece of legislation was.

Finlay Carson: Okay.

Mark Ruskell: Obviously, the levy raises important money for environmental projects and other initiatives. Will the 5p increase deliver more money or less money because there will be less use of plastic bags?

On the exemption, multiple major retailers have not had to pay money during the period of exemption from the 5p levy on the bags, but have they voluntarily offered to make good on those levy payments?

Roseanna Cunningham: I do not have an answer to that question. Obviously, if anybody wanted to voluntarily put forward sums of money that are equivalent to what they might have had to give, nobody would turn them down. I expect that the situation might vary from organisation to organisation. However, we do not have overall data about that at the moment.

We need to remember that it is a levy because going further than that would have turned it into a tax. That would have involved a reserved power, so we could not do that.

I am sorry, but I think that I have missed a bit of the question. I think that I overlooked something in answering the first part of the question.

Mark Ruskell: You have certainly answered the second part. The first part was about the increase in the levy and the net benefit. [*Inaudible.*]—buying bags. What will that do? Will that mean that more money or less money will come in?

Roseanna Cunningham: I cannot model that now, because it will depend on consumer behaviour. An entirely successful scheme would probably result in no money coming in, because people would simply have ceased buying the bags. I hope that Mark Ruskell is not suggesting that, because of that, we should hope that people will continue to buy them. We would take people ceasing to buy them as a massive success.

It is just one of those small ironies that the money that is raised goes towards good causes and, if less money is raised, that pot of money will not be available. However, that was not the point of the levy. The point of the levy was to reduce consumer demand and the resultant harms that come from the excess use of single-use carrier bags. The levy's success will be a continued reduction in that single use, notwithstanding the reduction in money.

12:15

The Convener: I notice from the chat box that Gareth Heavisides would like to come back in.

Roseanna Cunningham: Oh. What have I said wrong?

Gareth Heavisides: You have not said anything wrong, cabinet secretary.

On the point that Mark Ruskell made about continuing donations, we contacted retailers at the time of the initial exemption and asked them to maintain donations if they would. At the end of the day, it is their call—[*Inaudible.*]

The Convener: Okay. Nobody else wants to come in, so we will move on to agenda item 3. I invite the cabinet secretary to move motion S5M-23854.

Motion moved,

That the Environment, Climate Change and Land Reform Committee recommends that the Single Use Carrier Bags Charge (Scotland) Amendment Regulations 2021 [draft] be approved.—[*Roseanna Cunningham*]

Motion agreed to.

The Convener: I thank the cabinet secretary and her officials for their time this morning.

**Crofting Community Right to Buy
(Procedure, Ballots and Forms) (Scotland)
Amendment Regulations 2021 (SSI
2021/27)**

The Convener: Agenda item 4 is consideration of the Crofting Community Right to Buy (Procedure, Ballots and Forms) (Scotland) Amendment Regulations 2021, which is a negative instrument. I believe that Angus MacDonald would like to say something.

Angus MacDonald: Yes. I refer members to my entry in the register of members' interests. In relation to this Scottish statutory instrument, I am obliged to declare that I own properties in a crofting township in the Western Isles, which is on an estate that is subject to a community buy-out attempt, with the likelihood of a hostile buy-out. However, sadly, I derive no income from those properties.

The Convener: Will members confirm that they do not wish to make any recommendations in relation to the instrument? That is confirmed.

In its next meeting, on 23 February, the committee will take evidence on the environmental implications of EU exit from the cabinet secretary, consider petitions within the remit of the committee, and consider a draft of a report on the updated climate change plan.

That concludes the public part of our meeting.

12:18

Meeting continued in private until 12:33.

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