



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Constitution, Europe, External Affairs and Culture Committee

**Thursday 24 November 2022**

**Session 6**



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**CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE**  
**27<sup>th</sup> Meeting 2022, Session 6**

**CONVENER**

\*Clare Adamson (Motherwell and Wishaw) (SNP)

**DEPUTY CONVENER**

\*Donald Cameron (Highlands and Islands) (Con)

**COMMITTEE MEMBERS**

\*Alasdair Allan (Na h-Eileanan an Iar) (SNP)

\*Sarah Boyack (Lothian) (Lab)

Maurice Golden (North East Scotland) (Con)

\*Jenni Minto (Argyll and Bute) (SNP)

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Donna Fordyce (Seafood Scotland)

Jonnie Hall (NFU Scotland)

Dr Gareth Hateley (British Veterinary Association)

Julie Hesketh-Laird (Food Standards Scotland)

Elsbeth Macdonald (Scottish Fishermen's Federation)

Sarah Millar (Quality Meat Scotland)

Ian Muirhead (Agricultural Industries Confederation Scotland)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Constitution, Europe, External Affairs and Culture Committee

*Thursday 24 November 2022*

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

### Decision on Taking Business in Private

**The Convener (Clare Adamson):** Good morning and a very warm welcome to the 27th meeting of the Constitution, Europe, External Affairs and Culture Committee in 2022. We have received apologies this morning from Maurice Golden MSP.

Our first item of business is a decision on taking an agenda item in private. Do members agree to take agenda item 3 in private?

**Members indicated agreement.**

## Retained EU Law (Revocation and Reform) Bill

09:00

**The Convener:** Our next item is an evidence session on a legislative consent memorandum for the Retained EU Law (Revocation and Reform) Bill. We are joined by Julie Hesketh-Laird, deputy chief executive and director of strategy and corporate affairs, Food Standards Scotland; Donna Fordyce, chief executive, Seafood Scotland; Elspeth Macdonald, chief executive, Scottish Fishermen's Federation; Jonnie Hall, director of policy, NFU Scotland; Sarah Millar, chief executive, Quality Meat Scotland; Ian Muirhead, policy manager, Agricultural Industries Confederation Scotland; and Dr Gareth Hateley, junior vice-president, Scottish branch, British Veterinary Association. A warm welcome to all of you.

We will have a round-table meeting this morning, which we hope will enable some free-flowing discussion. We have roughly an hour and a half with three themes, so we are hoping to stick to the themes for half an hour or so each.

Our first theme is the regulatory environment. Could the witnesses give an overview of the impact assessment of the bill on the regulatory environment in which they operate, including the potential impact on trade and the impact on relevant standards and protections in devolved areas? That is a brief starter for everyone and I will go around the room in turn. Ms Hesketh-Laird, could you go first?

**Julie Hesketh-Laird (Food Standards Scotland):** Good morning. I work for Food Standards Scotland. We are the independent regulator for food and feed in Scotland. We are independent of the Government and report directly to you in the Parliament.

Our main concern with the bill is about consumer protection. It allows for European Union laws to be amended, and powers to do that, to be frank, would not necessarily be a bad thing. Although some powers already exist, it is unlikely that, if they had been used, we would have been invited here today. It is the sunset approach that is hugely problematic for us. It carries huge risk and unintended consequences for consumers and trade.

Retained EU law protects consumers and enables trade, and the bill undermines our ability to keep consumer protection in place, which poses a risk to trade—my colleagues here today will probably talk about that. There is absolutely no advantage in applying an arbitrary guillotine to

food and feed law, irrespective of the date that is fixed, whether it is 2023 or 2026. Huge efforts will be required by my colleagues in the Scottish Government and in Food Standards Scotland simply to ensure that the existing standards that are there to protect consumers continue to apply after the proposed sunset date.

The critical purpose of food law is to prevent poor quality food and unsafe food reaching consumers. Regulation should restrict poor and unsafe practices because the purpose of it is to provide public protection. Deregulation that removes consumer protection is not an improvement, and this bill offers a huge opportunity for deregulation in a way that could undermine consumer safety.

**Sarah Millar (Quality Meat Scotland):** Good morning. I represent Quality Meat Scotland, which is the non-departmental public body for the Scottish red meat supply chain. That supply chain is worth about £2 billion and 50,000 jobs across the Scottish economy. Quite crucially, that economic activity is spread throughout rural and urban Scotland.

The key characteristics of our supply chain that could potentially be impacted by the bill, in terms of the regulatory environment, include the fact that our supply chain infrastructure is spread across the United Kingdom. At primary producer level, the characteristics are that we have a lot of family farms supplying cattle, sheep and pigs into processors and other manufacturing sites. That manufacturing and processing side of the supply chain might involve retail packing sites and cutting plants south of the border and in Northern Ireland. Any friction from divergence either with the EU or within the UK could provide barriers to trade and, crucially at the moment, barriers to confidence in the supply chain. We are very conscious of the rise in input costs across the supply chain.

For us, the key with this bill is to ensure that we do not allow regulatory divergence. We need the operating environment to be as cohesive as possible because of the structure of our supply chain, but we also need to ensure that it does not create any more confidence barriers to business when confidence levels across the supply chain are already low as they are as a consequence of some of the economic challenges that we are dealing with now.

**Dr Gareth Hateley (British Veterinary Association):** Good morning. I represent the British Veterinary Association, which represents vets who work in a range of sectors across the industry, from practice—that is, vets who are doing farm work or small animal work but also provide a reserve to Government agencies in support of tuberculosis control or exotic disease emergencies, for example—to official veterinarians

who work closely with colleagues from Food Standards Scotland. We also represent vets who work in Government—I am now retired but my previous role was in the Animal and Plant Health Agency in disease surveillance.

We have heard quite a lot about divergence and I will add my penn'orth to that. The internal market is important because animal health and welfare is a devolved issue. One of the concerns is diverging welfare standards. If the situation plays out as it might, you could get a situation in which transport regulations on one side of the border are different from those on the other, which could have implications for how we move animals around, and that will have direct implications on trade. The internal market is hugely important and divergence is a big issue.

Likewise, in my world of disease surveillance, diseases do not regard boundaries but, if you have boundaries in place, you have to minimise the divergence to maximise the control that you have of these diseases. Vets have small or medium-sized businesses and they are impacted directly by that.

I will give you an example of one of the concerns from the regulatory perspective. EU law does not stand still; it is evolving. An example of that involves veterinary medicines. One of the 570 regulations that are being considered by the Department for the Environment, Food and Rural Affairs concerns veterinary medicines. That has huge implications. It has resource implications for the British Veterinary Association, if we need to provide consultation responses—we want to do that, as we want to engage. There are another 569 to deal with from that perspective.

We have large concerns about the bill and I think that there will be clear messages from other colleagues who will give evidence that the sunset clause is an issue and we want the period to be extended for as long as possible, or kicked into touch, if possible.

**The Convener:** When you mentioned the border, did you mean the Northern Irish protocol border or did you mean different regulatory areas?

**Gareth Hateley:** Both. Contextually, the bill is relevant in both situations.

**Ian Muirhead (Agricultural Industries Confederation Scotland):** AICS represents the agri-supply trade in Scotland, so we cover sectors such as animal feed, fertilisers, crop protection products, grain trading and seed production.

We are in agreement with many of the points that have already been made, and you will have noted from the written submissions that there is a lot of consensus across our representative organisations. To rewind slightly, the broader

context from a business perspective is that, in general, regulatory uncertainty is not welcomed. That is especially important in the current context, when many of our members across the supply chain are experiencing real pressures from inflationary costs, cost pressures for things such as labour, fuel and electricity, and, at the same time, things such as supply chain disruptions related to the war in Ukraine, which is leading to a lot of market volatility.

From our perspective, EU retained law was put in place to provide maximum business continuity and certainty post-Brexit, which was welcomed at that time. With regard to the proposal that we are discussing today, if the sunset clause led to a failure to ensure minimum standards for food and feed safety, that would have major business and trade implications particularly for our feed producing members. In such a situation, what would probably happen is that the supply chain itself, through our various assurance schemes, would have to implement our own standards to essentially replicate EU legislation to ensure continuity of trade, especially where we have members who are exporting to the single market.

To look at the wider context, there are also risks associated with gaps in food and feed safety law, as there is a lack of an effective border operating model in place at the moment, especially for imports. From a biosecurity point of view, for example, the risks from the importation of African swine fever, which would add increased pressure to our pig producers who are already under immense pressure, would be a very negative consequence of those proposals.

Having said all that, I will also make the point that, from our perspective, there are opportunities from the ability to review EU legislation, and we can give specific examples of them. That is caveated by the reality that we recognise that the mechanisms proposed, and particularly the timescales proposed, in this legislation are not realistic, and we recognise the time and resource pressures that that would put upon all those involved.

We have concerns about divergence. We have been supportive of the common frameworks and have given a detailed submission to this Parliament on the proposals that pertain to agriculture. We will continue to support that as the key way in which to ensure collaborative policy making across the UK to try to retain some form of commonality in regulation in some of these specific areas.

**Donna Fordyce (Seafood Scotland):** Seafood Scotland is the trade marketing body for Scottish seafood. We work with all of the industry to promote their products and try to get a premium price for them throughout the world—in Scotland

and the UK, but mainly elsewhere, through exports.

Seafood is a highly exportable product. It is also a highly perishable exportable product, and we saw the severe impact that Brexit had on our ability to get product into Europe. Europe is the biggest export market for Scottish seafood—we export about £1 billion of Scottish seafood, with 70 per cent of that going into Europe. That is our main market. Before Brexit, selling to France was just like selling to Glasgow. That was a simple process and it has been a real shock to the system for businesses to try to operate now under the Brexit model in terms of cost, time and so on.

There is a real fear that deregulation and any standards that are lowered from our side would interrupt the trade again. There would be additional checks made at the borders—that is just about to start happening in January, with 5 per cent of our goods being inspected. If we cannot guarantee that we are at the same standards, we could see more and more checks, which would mean more and more delays. The value of our product dwindles rapidly as it sits on a truck hour after hour, because even an hour means that you have missed the next day's trade. The impact of that for the companies is huge.

As others have said around the table, the companies are also dealing with challenging markets at the moment.

09:15

We have to involve industry in all the regulatory frameworks. We have to listen to the voice of industry. Regulation has to be workable for the industry. At the moment, the industry is operating in the face of high costs, labour issues and productivity issues. Time must be taken to ensure that things in EU law are properly put into Scottish law and UK law, taking into account the UK internal markets as well.

We have seen what happens when things are rushed. The Brexit deal was rushed at the end, and all the fallout started to happen after that. We get trade deals, but then it turns out that they are not the best for us. That is a key thing. Time must be taken to ensure that the arrangements are right for us and are not just put in place in order to get something over the line so that we can say that that that is done.

**Jonnie Hall (NFU Scotland):** It will be no surprise if I echo an awful lot of what has already been said. I represent NFU Scotland, which is the primary body representing agricultural interests in Scotland. Scottish agriculture consists of about 17,500 individual businesses, employs about 65,000 people directly, and provides the raw materials for Scotland's food and drink sector,

which employs around 365,000 people. We are very closely aligned to the likes of Quality Meat Scotland and Food Standards Scotland, as well as AICS, whose representative has already spoken. In some ways Scottish agriculture is the lynchpin in all those supply chains, providing both the input and the first link in the chain that ultimately extends to consumers of Scotland's food and drink here in Scotland and beyond.

We have some significant concerns about the bill. We have had concerns ever since the bill was introduced to the UK Parliament in September, not least around the lack of clarity and certainty about the processes involved and the intentions behind the bill. It is absolutely clear that regulation is required to underpin the integrity of what we all do in life. None of us particularly wants regulation but we all need regulation—no more so than in agricultural production in relation to animal health and welfare issues, our responsibility in environmental management and as businesses. There is a whole raft of business legislation, employment law and so on—the list is endless. It is interesting to note that of the departments in the UK Government, DEFRA probably has the most to deal with in relation to the potential implications of the bill.

I do not want to repeat what has already been said. My most important concerns revolve around the intersection of this bill and the United Kingdom Internal Market Act 2020. As others have already said, how do we respect devolved divergence of regulatory approach and policy needs to reflect the needs of food production and agriculture here in Scotland, for example, while maintaining a relatively level playing field within the UK and the internal market? We continue to have significant concerns about the UK Internal Market Act 2020, particularly in relation to the twin principles of non-discrimination and mutual recognition. How those play out will be of huge interest, if not concern. We want to monitor that situation.

Turning to the bill itself, in the conversations that we have had with the UK Government and UK Government ministers we have heard, "Don't worry, everything will be okay," but we do not accept that general assurance. We want to see something far more certain and committed on how things will be dealt with. The situation has often been described to me in terms of buckets: we will put some rules that we want to ditch into one bucket, some that we want to amend into another bucket and we will keep some others in a third bucket. That is not really that smart an approach at this stage in the process. Who will determine what goes into each bucket?

I will draw a line there but come back in with other comments in due course.

**Elspeth Macdonald (Scottish Fishermen's Federation):** Good morning. I am chief executive of the Scottish Fishermen's Federation, which is made up of eight constituent fishermen's associations around Scotland. We have members from the very north of Scotland right to the very south and on both east and west coasts. We have around 450 fishing vessels within our membership, which is by no means all of Scotland's fishing vessels, although it represents the majority of the catching effort in Scotland.

We have a very diverse membership, covering inshore and offshore, large boats and small boats, and shellfish, pelagic and demersal fishing. We have already heard some of the key statistics about Scotland's agrifood industry. The value of Scotland's wild capture fisheries at first landing is about £0.5 billion annually. Interestingly, about 60 per cent of the total UK landings in tonnage and value is generated from Scotland; Scotland is the biggest part of the UK for commercial fisheries.

I probably have a slightly different perspective from those who have already spoken this morning. We have heard about public health, animal health and trade, but my organisation is focused on management of fisheries, which is quite different in its function and what it is seeking to achieve.

There is no particular requirement for fisheries management to be harmonised. There are good reasons why we would want fisheries management to be quite different in different areas, for practical, biological and environmental reasons, for example. A good example of that is the common fisheries policy, which was an EU-wide policy for fisheries management that was much decried by those who were caught within it because it was often very much too prescriptive, too rigid and its regulations were made much too far away from practical fisheries management.

The scope exists now for there to be regulatory divergence. Fisheries has a very detailed and prescriptive chapter in the trade and co-operation agreement itself, which recognises that there will be divergence between the EU and the UK in fisheries management and contains lots of provisions for how that can be done. In the UK, we have the Fisheries Act 2020, which makes provision for and gives significant powers to the Scottish Parliament to develop the appropriate fisheries management regime for Scotland.

There is a wish and a requirement for there to be a divergence from the EU in fisheries management, but it is important that we get that right. For example, at the moment the Scottish Government is in consultation with the industry and other stakeholders on something called the future catching policy, which is intended to replace a part of the common fisheries policy called the landing obligation, which is completely unworkable



and impractical. The Scottish Government is trying to work with stakeholders to find a practical, effective solution and alternative to that obligation that is appropriate to Scotland's needs. However, to get that right will take time, thought, discussion, consultation and engagement.

There is a need to take the time to do this right. Where there is a need for and a sensible rationale for divergence we can have that divergence, but it is about getting it right and taking the time to get it right. The concerns about the bill are that there will be a rush in the timescale in which sensible decisions may need to be taken.

**The Convener:** Thank you very much. I will open to questions from the committee. If you want to come in and comment, please try to catch my eye or the clerk's eye and we will try to ensure that everybody gets an opportunity to take part in the discussions.

**Sarah Boyack (Lothian) (Lab):** I will start by thanking all the witnesses for their written evidence, because it is really powerful. I want to open on the regulatory environment and the impact on standards and protections, given that trade has been mentioned as well as the issue of regulatory divergence both from the EU and within the UK. First, I want people to tease out the potential impact on consumer protection and animal health, because just getting that on the record is quite powerful.

Donna Fordyce talked about a cliff edge in relation to sunset clauses. Food Standards Scotland gave us some powerful written evidence about the impact on consumer health and in relation to raw milk and butcher shops, as an example, and what the wholesale sunseting of food law would do to completely remove consumer protection but also animal health standards. I think that it was also mentioned by Sarah Millar of QMS. There was also a powerful quote from the Food Standards Agency in one of the submissions. It struck me that the comments are coming not only from the regulatory side in relation to protections but also from the trade sector. Ian Muirhead gave a strong warning about the impact on consumer protections.

Could you spell out, to have on the record, what that means in relation to public health and animal health? Do you have any thoughts about how we can prioritise preventing the potential impact of the bill? Julie Hesketh-Laird, would you like to kick off?

**Julie Hesketh-Laird:** We estimate that there are about 200 pieces of retained EU law that we lead on or share with other parts of government. The bill seems to confuse red tape and consumer protection. The rules that are in place are part of a complex and very necessary legal system to

protect consumers and to enable trade. The scope of the legislation affected by the bill is massive: it covers basic food hygiene standards, public health-related import controls, requirements for the composition of animal feed, basic labelling requirements, shellfish monitoring and so on—I could go on. All of those things are absolutely necessary for the safety of people eating food in Scotland and outside of Scotland in the places that we export to.

We heard in some of the debates in Westminster that the aim of the bill is to take us back to the days when British laws were dominant, but if we repeal or remove all the laws that I have just referred to, it takes us back to nothing in many cases—there is no protection pre-EU law. It takes us back to a day when those laws did not exist or there were other approaches that have been superseded by EU law that, as many of the witnesses have mentioned, has been put in place through a proper process with risk assessments. Such EU laws have been properly thought through and the legislators have taken their time to work through them. The laws exist for a reason and are not just red tape. Winding back to the days before EU law removes all consumer protection in many cases and that in turn has a huge impact on the confidence that our trading partners would have in food that is exported from Scotland.

**Sarah Boyack:** Do other witnesses want to come in? Donna Fordyce talked about a cliff edge with losing the sunset clauses.

**Donna Fordyce:** Given that companies have their backs up against the wall on this, how are we to divert resources to it? A good example is provided by Elspeth Macdonald and SFF's involvement in a lot of the consultations that are taking place on marine spatial planning, which takes time and effort. Businesses need to focus on their strategy and the way forward but are having to deal with all this and take time out of the business. If we rush things, there will be a real issue in relation to how much time we are asking of businesses.

It is important to have the time to properly implement things that will not be such a burden on the industry; people are keen to be involved and ensure that their voices are heard so that it is a workable regulatory environment and a sensible one. We need to take into account how much of an impact it will have on businesses if they are continually having to do monthly consultations.

09:30

**Sarah Boyack:** Ian Muirhead, you also warned about the impact of the bill on consumer protections. Do you want to say a bit about your concerns around public health, the impact on the

industry and on animal health as well? The bill covers feed for animals, too, because it goes right across the spectrum.

**Ian Muirhead:** From an AICS perspective, our main focus is on livestock feeds, which are very important here in Scotland because we are very much a livestock-centric agriculture. I concur strongly with the points made by Food Standards Scotland that in reality the bill will create an additional burden on Food Standards Scotland at a time when there is a squeeze on available resources and staffing resources as well. FSS has a regulatory function within the feed industry in Scotland in the delivery of official feed controls. That is one side of the practicalities of that new workstream.

At the same time, as we have discussed, the arbitrary timescales and sunset clauses within the bill would create an unnecessary and unacceptable risk of there being a hole in legislation if the provisions were not replaced, revoked or reformed with something similar. That would have an impact upon the underpinning of animal health and welfare regulations. As I have stated, if we take that into consideration from the point of view of a lack of a border-operating mechanism as well, that creates even more risks from a biosecurity point of view.

I would just pick up on the wider piece you touched upon about regulatory divergence and the concerns about that. The issue is that essentially the bill runs the risk of exacerbating divergences because of the timescales that are put in place and because of the reality of balancing the executive freedoms of the Scottish Parliament and of the United Kingdom Government and maintaining a level playing field when there are vastly differing political priorities from the point of view of, I assume, retaining as much EU law as possible from a Scottish perspective and possibly going down a differentiated route in the rest of the UK. That is a concern and the timescales might make that divergence risk higher.

**Sarah Boyack:** I was hoping to bring in Sarah Millar, who talked about possible confusion, given the sheer range of legislative change. I note that you also highlighted food safety, Sarah. Can you comment on that?

**Sarah Millar:** On the animal health and welfare aspects, I wanted to bring those things to life with regard to the reality of the supply chain, because what we are talking about here is supply chain function. With red meat, you are dealing with animals—in other words, sentient beings. If any part of that supply chain falls over for any reason, the impacts on animal health and welfare can be quite profound.

In a way, our strength is also our weakness. We have a strong red meat supply chain in Scotland, because we maximise the environment and the available resources. We take sheep, cattle and pigs from the Highlands of Scotland and our less favoured areas, move them on to better ground for further finishing and then move them from there to other parts of the supply chain. To maximise what we are able to do, we need to be able to move livestock and product not just across Scotland but within the UK.

One of the big concerns on day 1 of EU exit was about our ability to export certain animal by-products that go to specialist markets in Europe and which are then exported to third countries. Because there are no other routes for those by-products, the consequences of something that might have sounded so insignificant could have been the processing sector having to stop processing animals until it had managed to find those routes. If you stop just one link in the supply chain, you get animals in the wrong place. If they are not being moved off some of the less favoured grounds where the grass growth might not be so strong, you start to have on-farm welfare implications. That is why it is critical to our supply chain for consistency to be maintained in the regulatory environment.

The supply chain also needs stability to function. If there is any friction in it, businesses lose confidence, and then they do not commit to future trade, start looking at new markets or de-risk parts of their business, which does not help us. Because ours is quite a long-term supply chain, particularly in the cattle sector, any knock to confidence now would have ramifications three or four years down the line. The impacts can be quite long term.

I am just trying to bring this to life to show what happens at the business end, because I am conscious that regulation and legislation can be quite technical, and I think it important to reflect what would happen on the ground.

**Jonnie Hall:** In her question, Sarah Boyack focused quite rightly on public health and animal health and welfare issues, but I would also add into the mix something else that we must not take our eye off: the whole issue of environmental protection, which is clearly of significant interest to agriculture. At the end of the day, the fact is that agricultural land management covers about 70 per cent of Scotland's land area; in fact, it is not just the land, but the surface waters and all the habitats and environments within that landscape, too.

Perhaps I can illustrate the point. A significant amount of agricultural support came through the common agricultural policy; because that has now been rolled over into Scots law through the Agriculture (Retained EU Law and Data)

(Scotland) Act 2020, we have a continuation of those schemes and the rules around them. One of the key elements of that is the cross-compliance rules, which cover two sets of requirements: good agricultural and environmental conditions and something called “statutory management requirements”. Those statutory management requirements basically hang off an awful lot of EU law that is set out in existing directives, particularly the birds directive, the habitats directive, the water framework directive and the nitrates directive, but quite a few others, too. It is complicated and difficult, but ultimately what it filters down to is what is expected in basic standards of environmental stewardship.

As others have said, we need to tread very carefully in our approach to any review, revision and retention of elements that essentially underpin land management in Scotland. At the end of the day, we must ensure that our environment is protected. After all, it is the bedrock of what we then do to deliver all sorts of other aspirations, particularly those that come from this place such as tackling climate change, enhancing biodiversity and so on.

I therefore urge that we consider the environmental components as well as the public health and animal health and welfare issues. To be honest, the list is pretty endless.

**The Convener:** I will bring in Dr Hateley now. I see that Ms Hesketh-Laird wants to come in, too.

**Gareth Hateley:** Do not worry about the “Doctor” bit, convener—it is just a grace title. I do not know how it slipped in, but it does not bother me if you do not use it.

Following on from what Jonnie Hall has been saying, I would just note that today is evolution day, and biodiversity is very much in people’s minds. I should also say that I have a background in climate change, too, so I am happy to feed that into the discussion, if it is relevant.

However, putting that aside for the moment, I wanted to follow on from what Sarah Millar was saying about supply chain issues. We have seen issues with pigs across the UK; I do not know whether you remember the CO<sub>2</sub> problem that we had, but it shows that if one thing goes wrong, particularly in a carefully controlled supply chain, pigs back up—and when pigs back up, you start to get animal health and welfare issues. It is just another example that shows that, if anything adds to the pressure on the supply chain, you pretty quickly start to get serious animal health and welfare problems.

The other thing that I wanted to say is that, whatever our views, we are now post-Brexit, and one of the consequences is that we are now no longer in the club. From an animal disease

surveillance perspective, that has implications for the level of confidence that the EU—our major trading partner—has in what we do to control endemic disease, exotic disease and so on. The bar has gone up, and it will have consequences for the way in which we respond.

Perhaps I can highlight bluetongue disease as an example of our response to exotic disease surveillance. You might remember that, in 2006, we had bluetongue, which is something that we do not particularly want again. However, if we do get it—and this brings us back to divergence and cross-border issues—it is really important that we deal with the disease in a collective way across the piece. If we started to impose movement restrictions on animals in order to respect a country’s boundary, it could have implications for, say, where the abattoirs are.

The whole thing is so interlinked and complex that tinkering with one bit almost brings in the law of unintended consequences. We need to be cognisant of that, and we need to have time to consider the implications of any changes. I just wanted to give you some illustrations of the issue.

**Julie Hesketh-Laird:** I want to go back to the question that I was asked directly about the consequences of tackling some really difficult things on the regulatory side and some of the examples that were in our written evidence, just to bring to life the complexity of food law.

Food law is a system. We do not have lots of neat little bits of legislation that we can just put in a bucket to keep or save; instead, all of these things are deeply interlinked and intertwined, and they go back many years. The example of E coli, which we have highlighted in our written evidence, brings that to life, I think, and I just want to go through it, because it provides a really powerful illustration.

Back in 2004, old prescriptive sector-specific guidance was replaced with a risk-based general requirement to bring most businesses into line with the hazard analysis principle of food hygiene and food safety. That was negotiated in Europe, and at the time, the UK’s main aim was to achieve effective, proportionate and risk-based controls. The precise example that the approach really helped with was in cases of raw meat being potentially contaminated with, say, E coli or something similar. If E coli comes into contact with ready-to-eat food, the consumers of that food can become seriously ill. That is what happened in 1996 in a well-known case in Lanarkshire; there was a fatal cross-contamination incident involving E coli that resulted in 490 cases and 18 associated deaths.

That led to the Pennington group report which, among other things, recommended a licensing scheme for butchers. That system applied pending

their training and the roll-out of the hazard-based approach, and then the European scheme came in and replaced all the UK's interim protocols. That was what happened in 2006 when the EU rules came in, and it means that, if we roll back to what was in place before the EU rules, we go back to having no consumer protection in that area. The evidence in that respect is stark.

We would assume that, if the bill went through at Westminster, measures would be taken to preserve those basic requirements, but it seems strange to us that you would want to sweep away vast tranches of European law that are there for a really good reason, and then have to build them up from the start again, go through all the arguments, take up Food Standards Scotland's time—and the Scottish Government's time—in rewriting the rules in a slightly different but similar way to the EU ones and then put the same process back in place. It is not a good use of my time, my team's time, the Scottish Government's time and parliamentary time.

I am sure that there are places where we could speed up processes or make amendments to regulations to improve things, but this is absolutely not the way to do it. Just think of the time, resource and effort that would be taken up, as Ian Muirhead has mentioned, at a time when the civil service is greatly pushed for resource and people. There is no good time to do this sort of thing, but now would be the worst.

09:45

**Jenni Minto (Argyll and Bute) (SNP):** I would like to explore what Julie Hesketh-Laird has just talked about. Donna Fordyce touched on it as well, in her evidence about how businesses had to change and about what did not happen as a result, because they were having to look at the new ways of doing things. For Food Standards Scotland, it was what you would not be able to do if you were having to spend the time on this.

**Donna Fordyce:** Yes, the impact when Brexit happened was that things came to a halt for a couple of weeks because the system that was in place broke down, so they could not operate. However, for two years before Brexit was implemented it was a real focus, in the number of working groups and committees that people were responding to, and for the business leadership teams who were continually at weekly meetings trying to prepare for it. When Brexit happened, it was not a case of, "That is Brexit. This is it, we are here." People then had to implement all that.

The focus has definitely been huge and the consequential impact is that we do not have enough staff. While we are out there promoting the fantastic products that Scotland has to offer, the

reality is that we cannot process them because we do not have enough staff. Last Christmas, the retailers were delighted to get 70 per cent of the product lines that they would usually get because they were worried that there would be less. Companies are contracting. They cannot take up a lot of the opportunities that are out there, or they are swapping out rather than being able to grow.

It has been a massive issue—the time and resource of operationally trying to prepare for Brexit and then dealing with the fallout, which is still happening. It is continual. Sampling is about to start. Last week, we had commodity codes issues as well, so we could not get products over because of that, and so on. It is just continual because things change constantly. The EU changes things and we are not told about it, so we are then trying to find out how that impacts us. It takes a lot of time.

We had to bring in Brexit specialists to help to support companies and they are still there. They are still helping companies and supporting them to get through a lot of the regulations that have changed in a post-Brexit landscape. It is costing money to have those specialists providing support and it is still taking up time. Going through that whole consultation process, because everybody wants it to be right, takes a lot of time and a lot of resource, especially during this time.

A number of us have touched on the fact that these are unprecedented times, as we have heard from all the companies. It is a crisis, which is not helped by the Ukraine situation and so on. These really are unprecedented times, so a worry is the amount of time that companies would be able to put into the process if it is rushed, whereas if it is spread over a longer time, it could be managed more sensibly.

**Julie Hesketh-Laird:** To pick up on Donna Fordyce's final point, we would be nervous, too. It is that rush. Would there be any inadvertent, unintended consequences of not getting it right? That would be a real challenge, if we were working through all those 200 pieces of retained EU law.

When Brexit happened, it has driven huge change within Food Standards Scotland and the regulatory environment. We now have to replicate some of the work that the European Food Safety Authority did when we were in the club. We have had to create teams in Scotland and, to be fair to the FSA, they have had to replicate that in England, Wales and Northern Ireland, too. We work closely with them, but there are people in my organisation doing work that was previously done through a much bigger organisation with much better resource. That is already difficult for us to resource and we are already having conversations with the Scottish Government and ministers

around how we can provide that service going forward.

The resource review from the Scottish Government that came out earlier in the year, back in May, indicates that we will have a flat budget for the next five years, so that already makes it difficult for us to begin to take those things forward. I cannot answer the question right now as to what we would not do—

**Jenni Minto:** It is a bit crystal ball.

**Julie Hesketh-Laird:** Yes. There are so many regulations and we do not know what buckets they will end up in, even if you could put them in buckets. However, we are working through a process at the moment. I cannot pre-empt the board paper that is going to Food Standards Scotland on 7 December that begins to unpick for us what things we would shift resources off, if we had to do that. I do not think that it would be any secret if I said that things such as managing incidents and food crime, and inspecting meat plants, are all absolutely top priorities. We would find it difficult to take any resource off those things at all.

However, there is lots of other work where we would need to divert whole teams of people on to our EU law. I would not be exaggerating if I said that even if we put our whole team on to this single bill it probably would not touch the edges of what we would need to do. There will be difficult conversations with the Scottish Government as to how much it wants to resource that going forward, because that decision sits with ministers and not us.

**Elsbeth Macdonald:** I want to illustrate some of this from the perspective of a trade organisation. Julie Hesketh-Laird and Jonnie Hall have both spoken about putting things in buckets. Of course, it is not as simple as that, because you cannot just look at regulations and say, “That one goes into the keep bucket. That one goes into the ditch bucket. That one goes into the we’ll-think-about-it bucket.”

As I am sure will be the case in all the commodity areas, certainly in fisheries, what we have already been doing is drilling through every piece of EU law and saying, “That particular clause could go. That particular clause might still be useful if amended.” It is a huge task. It is not a straightforward keep-or-bin exercise. It is much more line by line. What pieces are no longer relevant? What pieces would you want to get rid of? What pieces would you change? What pieces would you keep? It is a huge task.

Thinking about what we would not do if the task were to be accelerated, it is more a question of what Government would also not be able to do, because we are aware that there is an ambitious

programme of domestic policy and domestic legislation on fisheries. Some of that comes from the Bute House agreement. Some of it comes from the future fisheries management strategy that the Government published about a year ago, setting out its vision for Scottish fisheries for the next decade or so. There is much to do in all that.

Government resources will be stretched to carry out an extensive programme of regulatory reform as well as the domestic policy development. When you translate that on to a relatively small trade organisation such as us and think about the resource implications of that, it is very significant. We are already under very significant pressure from things such as the expansion of offshore wind in Scottish waters and the implications for fisheries. There is a great deal to think about in terms of how resources could best be deployed to the appropriate priorities, which will impact on both Government and industry bodies.

**The Convener:** I have three indications from our visitors before I move to questions from Mr Cameron. Could you try to be succinct, as we are running over on this area already?

**Sarah Millar:** I wanted to pick up on the question that went to Donna Fordyce about the impact of EU exit on the business environment. For us, that Glasgow to Paris analogy is absolutely perfect. You used to be able to put a pallet on a lorry and it could be dropped off in Glasgow or go to Paris and it was the same regulatory regime. It was easy for businesses to access high-value markets, and the level of risk to that business in diverging away from core business, perhaps into domestic retail markets, was low.

What we have seen is added risk put into exports. While businesses have now found a way to do that, it has added risk. We have seen that their appetite for export has definitely reduced, although I would say that it is starting to come back. From my point of view, having been through the rollercoaster that was the EU exit in January 2021, we are now in a better place. My fear would be that, if we start to increase that risk burden again, that is significant economic opportunity that we are losing for Scotland.

Trade, after the EU exit, was down 36 per cent in quarter 1 of 2021. It took us a whole year to get back, and there are still some businesses who were previously exporting who are not. That, for me, is the key thing to remember. It is stifling economic activity.

**Gareth Hateley:** Quickly from me, just to follow on from what Julie Hesketh-Laird said and pointing back to Sarah Boyack’s original question about public health and animal health, I just want to contextualise that a bit and say from a veterinary

perspective we are really talking about one health here. It is in the round. There is a lot of interaction.

For example, in my world of disease surveillance, probably in the order of between two thirds and three quarters of new and emerging diseases have what we call a zoonotic potential. That means that a disease can pass from animals to man. We have had an example of E coli O157 that is clear. I am just pointing out that the law of unintended consequences means that something will probably happen and we need to make sure that the regulatory environment does not stifle our ability to detect disease earlier.

My last point, following on from what Julie Hesketh-Laird said about resource, is not to forget that, in 2001, it was an abattoir vet who first detected foot and mouth—I remember it well because I was there. If you take resource away from those areas, you put other areas at risk.

**Jonnie Hall:** I echo the commentary of Julie Hesketh-Laird and Elspeth Macdonald, and the point that Dr Hateley has just made. The problem is the timing of the review process, first of all, and the political urgency, almost, to be seen to be doing something, at a time when we probably need it least. We are probably coming to the conclusion that we still need an awful lot of the legislation to continue. It serves a purpose. It serves a very important function. That takes you into the questions around resource and capacity.

Right now, the Scottish Government is consulting on a new agriculture bill, which will come to the Scottish Parliament in 2023 along with other pieces of legislation. That in itself is a huge task for Scottish Government officials. It is the first time that the Scottish Government has had to do this, given that for decades it was basically about adapting the common agricultural policy to Scotland's circumstances and working within those rules and those objectives. This is very different and it is already stretching the capacity of Scottish Government officials. If they were to be taken off that, plus the on-going processes around existing schemes—inspection, compliance issues, monitoring, all the Animal and Plant Health Agency work and so on—it is just not feasible. It is absolutely unfeasible. At some point, to use a cliché, the wheels will come off if we do that, and I think that would be extremely dangerous for all sorts of interests.

**Donald Cameron (Highlands and Islands) (Con):** Thank you, convener. I should refer to my entry regarding agriculture in the register of members' interests.

I will return to the questions of staff, timing and resources in the third section, and I will ask about two issues. First, on deregulation, the bill gives both the UK Government and the Scottish

Government the ability to restate retained EU law and replace it in its entirety. I do not speak for the UK Government, but I think that it is only fair to set out its position on deregulation. It has consistently said that it does not want lower standards and, in some instances, it wants higher standards.

Does the panel accept that, although there is plainly a risk of deregulation, there is equally the potential to either mirror EU standards or enhance protections, which ability applies to the UK Government and, perhaps more pertinently, to the Scottish Government? I pose that question to Julie Hesketh-Laird because she mentioned deregulation.

**Julie Hesketh-Laird:** I suppose that, yes, the bill could give the opportunity to do that, but why use valuable time and resource to go through that process when we have in place very strong rules, which have been negotiated based on evidence, risk assessed, with proper impact assessments having been done, and consulted on, and for which the due legislative process has taken place? Why would we sweep all of that aside, start again and have to unpick? As Elspeth Macdonald said, food law is not contained in neat buckets; it is a system. It seems odd, at any time, to want to unpick a whole system and rebuild something almost entirely identical from scratch. It does not seem like a good way of spending taxpayers' money.

10:00

**Donald Cameron:** Arguably, the bill would simply allow the Scottish Government to flip whatever retained EU law exists into a new form of law, without any of that.

**Julie Hesketh-Laird:** Yes, I suppose that it would, but we are not confident that, through the process of the bill, everything that we want to be retained will be retained. Why not start with the premise that you retain everything rather than sweep away everything? To me, that is the wrong way round.

**Donald Cameron:** I will move on to my second point, which is principally directed to Elspeth Macdonald and Jonnie Hall and is about divergence.

Elspeth, today, you spoke about the stakeholders whom you represent and, please correct me if I am wrong, a wish to move away from EU law that enshrines the common fisheries policy. Jonnie, in previous evidence to this committee, you spoke about the common agricultural policy and moving away from that for the needs of Scotland's farmers and crofters. It is, of course, Scottish Government policy to align with EU law. My question is, looking at the bill, do you have any observations on the policy behind it in

relation to allowing your sectors to move away from existing EU law?

**Elsbeth Macdonald:** As I said in my first remarks, there is a recognition between the UK and the EU that there will be divergence on fisheries management, which is reflected in the trade and co-operation agreement. We also now have the UK Fisheries Act 2020, which creates a framework for secondary legislation on fisheries management across the UK in a devolved context. I am not a lawyer, but I think that there is already the provision to start the divergence of fisheries management regulation from the common fisheries policy. I am not sure how much the bill adds to or detracts from that—that would need some careful legal analysis—but there is an existing framework there.

As I said, there is certainly much scope to develop better fisheries management measures that are more appropriate for Scotland and are not EU-wide ones that you are trying to fit into Scottish circumstances. Jonnie is absolutely right when he says that we may not always like regulation but it is important to have it. We have to make sure that our fisheries are being managed appropriately. The way that the 2020 act is set up recognises that there will be different ways in which you might want to do that, even across the UK. There is provision there for quite an innovative approach of using fisheries management plans to determine the right types of fisheries management for different fisheries in different areas.

Our industry certainly welcomes that opportunity for divergence in how we do fisheries management, but we also recognise that much of our product is exported and it is important that consumers at home and wherever our export markets have confidence in the product. Therefore, I recognise the points that others are making.

There is definitely scope to do things in fisheries management better than they are done in EU law. We already have a pretty hefty body of legislation in the UK to allow us to do that, through the 2020 act, to which I think this Parliament gave its legislative consent. As yet, I do not have a clear understanding of what the bill will add to or subtract from that.

**Jonnie Hall:** I will go back to your first point. I agree that there is the potential to do things better, as I think you said, but I do not think that that potential can ever be realised if we are looking at a sunset clause or, as I prefer to call it, a guillotine, 13 months down the track. That is the problem. I agree that if time and resources are on your side, there is an opportunity through the bill to look at matters and improve them, if that is the conclusion, but I do not think that the time pressures that the UK Government is trying to

impose, arguably to shake up certain Government departments to get them to deal with it sooner rather than later, helps at all, as we previously discussed.

On aligning with EU policy, there is always the little caveat at the end of “where practical”, which has been stated by the Scottish Government on a number of occasions. The common agricultural policy, as you have heard me say before, does not work particularly well in Scotland’s interests. It does not work particularly well for Scottish agriculture and all the responsibility that Scottish agriculture carries for food, climate, biodiversity, rural development and so on. The opportunity to diverge or move away from the common agricultural policy is a very important one for Scotland to take, but the overriding objectives with regard to the aspects that I have just mentioned—high-quality food production, climate, biodiversity and wider rural development issues—are not diverging from Europe’s objectives. There is an opportunity to shape and do things in a way that is far better suited to Scotland’s profile and needs.

The common agricultural policy was always a bad fit for Scotland—it was clunky and difficult and made it far more challenging. There is an opportunity to still deliver the same intended outcomes as Europe is trying to achieve on a number of things but to do it in a much more bespoke way for Scotland’s needs.

**Donna Fordyce:** I want to pick up on the enhanced protections. We have to be careful that we are not gold plating some of the regulations because we want to have more enhancement. We might want to do that for food security and consumer protection, but we have to make sure that we are not creating more red tape for businesses, and that we are not giving them an additional burden in Scotland that would not be applied across the UK, thereby putting us at a disadvantage.

If we are gold plating more of the regulations, as far as trade is concerned, we will not get a premium for it. It is not as though, if we enhance things, we will get more money for it. We will still get the same money for the goods that we are producing. There might be areas of weakness that we feel that we want to enhance, but it is about making sure that we do not put an additional burden on the businesses for no additional benefit and put them at a disadvantage.

**Ian Muirhead:** I want to pick up on a couple of points. I think that it is a good question about the proposals. From our perspective, as I stated in my opening remarks, we welcome the opportunity to review existing EU legislation, notwithstanding our concerns about the proposals as they stand. It would be interesting to understand a bit more about what Donald Cameron referred to as the

flipping process for retained EU law, including the resources that would be required to do that and the timescales. However, if we are talking about what we could do with the existing resources, it is probably a more targeted approach to a review of EU law.

We have a number of specific examples in which we can see the real benefits that would accrue from specific targeted approaches. I will give you two examples. One is that, at the moment, there is an issue with differentiation between the approvals processes for genetically modified organisms in Scotland and the United Kingdom and in the EU. That has been exacerbated by the war in Ukraine and supply disruptions, meaning that our members have had to source commodities from places outwith Europe. Because they are transhipped through the European Union, it creates a real issue where there is a differentiation between what is approved in the EU and what is approved in the UK. Therefore, there is a real pressing need to have a reformed review system in Scotland and the UK for that. That is an example of where FSS resources could be deployed but might not be because of proposals in the bill.

Another example is the retained EU law on feed additive authorisations. There is an opportunity to look at bringing in additives that can help with methane mitigation in livestock, which would have real environmental benefits for the Scottish and UK livestock industries and help to meet emissions reduction targets, but that is quite a difficult thing to do at the moment due to some of the specific barriers in the retained EU law. Those are just two examples of where there are opportunities within the process.

In reality, when it comes back to the issues around EU alignment and the UK approach, the UK frameworks and the common frameworks approach only really works if there is the political commitment, which I understand was contained in the common frameworks, to work in consensus and to reach compromise where possible in order to have a degree of commonality across the UK.

**The Convener:** Ms Macdonald has a small final point.

**Elsbeth Macdonald:** Jonnie articulated very clearly how you can have similar objectives but different ways to achieve them. I put on record that I think that that is what the Fisheries Act 2020 aims to achieve. The act is there to achieve a number of overarching objectives but it recognises that there are different ways of getting there from the current model of EU law.

On Mr Cameron's point about the Scottish Government's approach to divergence, in fisheries management, we are seeing that it is willing to

look at divergence from EU law. We see that through the consultation and the work to develop a new catching policy for Scotland. It is not about increasing or decreasing standards; it is about trying to achieve the same overall objectives in a way that is more practical and is fit for purpose for Scotland—a more Scottish-determined policy and legislative way. The devil will be in the detail, of course, which is why it is important that those matters are given sufficient time and focus to make sure that we get them right and do not end up with a slightly different set of laws that still do not work particularly well.

**The Convener:** Ms Hesketh-Laird, I know that you want to come back in, but could you pick up your point in your answers to subsequent questions from the committee? I will move to questions from Dr Allan.

**Alasdair Allan (Na h-Eileanan an Iar) (SNP):** Julie Hesketh-Laird said that the situation around the reserved EU law was strange—I think that that was her word, and I can assure you that many of us here find the idea of 4,000 or so laws pretty mystifying as well. The area that I want to open up is more how those laws might be replaced. We have already looked at how cumbersome a process that might be, but one of the issues that this committee has been considering is the idea that UK ministers would have the power in many areas to amend laws in devolved areas. The NFUS has raised issues around the restrictions that the United Kingdom Internal Market Act 2020 would place on Scotland's agency to act. Can we open up a discussion on what people feel about what the possibility that it would be UK ministers who would potentially be amending laws in devolved areas implies for parliamentary oversight and the involvement of interested parties?

**Julie Hesketh-Laird:** I do not have a strong answer to that because I am outside of Government, and I suppose that those are issues for the Government to opine on. However, I will go back to my previous comments that scrutiny at the place where the rules are applied by the people to whom they apply, by the experts in the jurisdiction where they will apply, is important. There are also the obvious constitutional issues.

To touch on the previous point about deregulation, I agree with Ian Muirhead that there are some areas that we could improve, and regulated products for feed is one of those areas. I think that we could generally speed up the system by just removing some of the clunkiness in the process. I do not know, Mr Muirhead, whether you would get your authorisation for methane enhancers because that application would still need to go through the same scrutiny. As Alasdair Allan was implying, it is important that, in Scotland,



that is done by the people who govern Scotland for the benefit of consumers in Scotland.

10:15

**Jonnie Hall:** If you look at the bill in a very simplistic way—that is what I do with most things in life—the intention is, basically, by 31 December 2023, to wipe from the statutory books existing EU law or retained EU law unless we either provide an extension or we exclude it from that process. However, my reading of the bill is that the issues around extension in particular are within the gift of UK ministers because it is a UK bill, but nevertheless there are—as Dr Allan has expressed—clear issues around what is a reserved matter and what is a devolved matter. That is where we get into this very complex and political arena and I think that that will make the situation even more difficult—that is an easy way to put it.

From our point of view, and I guess maybe from that of others around the table, it is the practicalities and the pragmatism around some of those issues that will matter. As I said earlier in response to another question, we need to know who will decide what process we go through to decide which pieces of law are to be removed, which extended and which excluded. That is a cause for concern because, at every point, when I have asked UK Government departments for clarification, getting that clarification has been extremely difficult—in fact, there is no clarification.

**Sarah Millar:** I think that one phrase brings this together and it is “unintended consequences”. If we change such a great deal of legislation in the regulatory environment quickly, we will miss some of the consequential links that will impact on environment or businesses here in Scotland. We are in danger of slipping into that situation. The question is, how do we fix that?

We know that, after EU exit, we have to reform the regulatory background, but there is a question about the timescale. We have put an arbitrary timescale in place. We do not need to do that to ourselves. We could take a much more phased approach that would lessen the impact on business and also enable us to build some of the key foundational pieces that we need post-EU exit to make sure that we can capitalise on the economic opportunities we have in Scotland—that relates to what we were saying earlier about the common agricultural policy.

There is no point in reframing that regulatory environment if it will just cause additional cost to businesses and result in Scotland losing economic activity to other parts of the UK, which would be detrimental to jobs, the environment and to us. We

need to be aware of the unintended consequences.

**Elsbeth Macdonald:** When the fisheries bill was going through the UK Parliament and this Parliament gave its legislative consent for that bill—which I think may be one of the only Brexit bills to which this Parliament gave consent—one of the reasons that we were broadly supportive of that legislation is because it is a framework and it does not prescribe a great deal of detail at that primary level. It gives quite significant wide-ranging powers and responsibilities to the Scottish Government and to Scottish ministers to make legislation in Scotland. One of our biggest criticisms of the common fisheries policy was that it was made too far away from those who were knowledgeable about the areas that were being regulated and impacted by it. As a principle, it would seem that if UK ministers are making changes in devolved areas that should be with the consent of Scottish ministers who are closest to those areas.

If change starts to happen in the uncoordinated way that Sarah Millar has just described, the risk of real confusion and unintended consequences is very large. There is a lack of clarity about how all these different moving parts will work together to ensure that we have a sensible functioning statute book for our various areas of responsibility. There are many unanswered questions and there is a lot of scope for confusion and unintended consequences that we have to be careful to avoid.

**The Convener:** I think that our discussion has covered our three themes. Before I ask a question about levelling up and the Scottish Government, however, Mr Ruskell has a question.

**Mark Ruskell (Mid Scotland and Fife) (Green):** I should declare an interest in that I am an associate member of the British Veterinary Association, although not a doctor.

I want to pick up on the third theme, which is about practical considerations, although I think that we have covered some of that already in the answers. We know that it is only 13 months to the guillotine, as it has been described. Could the witnesses give us their reflections on what that means for their organisations and how they anticipate working directly with Government departments, particularly DEFRA?

You are having to review 570 laws. We have heard general concerns about resource and staff implications, but how are you practically trying to work with that challenge in engaging with your members and Government departments, setting up working groups and so on? What does that stakeholder engagement look like for you? These decisions will need to be made if there is a sunset timescale of 13 months, rather than a phased

approach being taken or a much more distant deadline being put in place.

**Gareth Hateley:** The BVA is a member organisation. As a consequence, it is responsible to its members and those members provide the funding for that is being done. The BVA engages at the devolved level and at the UK level but it has limited resources. The simple answer to your question is that, if a lot of effort has to go into reviewing retained EU law, those resources cannot be spent on other things that are important to do with animal health and welfare and human health and welfare, by which I mean the health of vets. I cannot give you an exact figure but it will have a profound impact.

**Mark Ruskell:** That was a useful reflection on the impact. I am interested also in what practical measures you are putting in place, because the clock is really ticking on this.

**Donna Fordyce:** At the moment I do not have any engagement with DEFRA on any of this, but just reflecting on that, what we did with Brexit was really pushed by industry. DEFRA continually held meetings with industry and was trying to do its best. It would step up to the plate post-Brexit and try to get issues resolved, but it does not have the required manpower. Again, the resource issue is important. There is constant change in DEFRA as well—the people change—so there are issues around education. The education piece seems to be continual with staff in DEFRA, unfortunately. The department does not have the resourcing to deal with 570 pieces of legislation. Everything else will be set aside and, as Julie Hesketh-Laird said, what will it focus on? What will be the key parts?

DEFRA still has a lot of other issues to deal with, so to have that volume of pieces of legislation to deal with will be a real struggle, and it will find it difficult to engage with industry as well. I think that there will end up being a bit of frustration. We have not come across that yet, but we know from the amount of effort and time that was put into Brexit that the department will step up, but it will be overwhelmed. If we have such a tight timeframe, we will not get what we want.

**Mark Ruskell:** I am getting the sense that there is not a plan—no one has said to you, “These are the dates by which you need to respond”. Sarah Millar, do you have a view?

**Sarah Millar:** For us, this is about developing a whole new work scheme. Part of the core role of QMS is to market. One piece of our marketing campaign is Scotch beef, Scotch lamb and specially selected pork, but, because of the challenges that this bill could potentially bring in getting product to market, we are having to invest more time and levy payers’ money in ensuring that we have the bits and pieces of legislation in place

that enable us to trade, which then, in an ever-decreasing pot, means that we have less money to spend on that core marketing work. We are having to make a very stark choice to keep the wheels on.

We have a limited resource at QMS but there is another issue alongside that. I will use an example of another piece of legislation that is going through the Parliament at the moment on the welfare of animals during transport, which comes from a UK Government manifesto commitment. We found during that process that the stakeholder engagement was disjointed, particularly when it came to the devolved nations—we came in late and we were not even invited to some of the discussions that impacted our sector. We had to push—I feel like I am constantly having to remind people that we exist in Scotland. I think that that is important.

We need to make sure that the innate challenges that Scotland faces are reflected as stakeholder engagement takes place for each of the different provisions that will be reviewed in the legislation, but that is a huge amount of work. Just one bill is taking up a considerable amount of our time but it is important because of how product and animals move within the UK. We cannot not do it, but that impacts on what else we can do.

**Elsbeth Macdonald:** In response to your question about engagement, there has really been none as yet specifically around the implications of this bill, either with the Scottish Government or with the relevant parts of DEFRA. Obviously, it is touched upon—we know that it is here and it will be a big deal—but there has not yet been any detailed specific discussion with either Government about how and when to do things.

As I think that I alluded to earlier, there is already some emerging domestic policy in some of these areas anyway, certainly in Scotland, but that had started previously and was not in response to the introduction of this bill.

A joint fisheries statement was published yesterday, with the four UK fisheries policy Administrations setting out how they intend to achieve the objectives of the Fisheries Act 2020. That shows a good cross-UK relationship in relation to how the Administrations work on fisheries. They work quite well together, although they will have different ways of achieving things, but we know that Marine Scotland is under very significant resource pressures. It has huge commitments from the expansion of offshore wind that are also putting enormous resource pressures on my organisation, and also from things like the commitment to introduce a huge swathe of highly protected marine areas by 2026.

There will be a real clash between domestic policy ambition and achieving what this bill sets out to do, and, at this stage, there has been no specific discussion about the implications of the bill with either Government.

**Jonnie Hall:** We have been in London for the past couple of days and we have met ministers from DEFRA, the Scotland Office and the Department for International Trade. Our visit was not so much about committing our resources to that because we do not have the resource to do that, as others have already expressed; it was more about seeking clarification, transparency and openness about what is happening and also being able to then be a sense check, as I think other organisations could be, about some of the potential implications and unintended consequences that we have already touched on. I think that that will be very important, but whether we get the opportunity to do that or not in that timeframe remains to be seen.

In the UK context, obviously we are NFU Scotland but we work closely with our colleagues in NFU England and Wales and also the Ulster Farmers Union in Northern Ireland. Collectively, we are all in the same place on this, so we will be working very closely together to try to bring to bear our influence on the processes in Westminster.

10:30

Having mentioned DEFRA, the Scotland Office and the Department for International Trade, I should say that my understanding is that the lead department on all this is the Department for Business, Energy and Industrial Strategy. Getting some inroads into BEIS is proving quite difficult at the moment.

**Mark Ruskell:** If there is time for another question, I would like to ask what your preferred sunset clause is, if you would like there to be a sunset clause at all.

I think that Gareth Hateley said that he wanted the laws to be in place for as long as possible, and I think that Jonnie Hall said 2026. We have had evidence to suggest that that is quite an arbitrary date—it is 10 years after Brexit. Do you have any specific thoughts on when a sunset clause, if there should be a sunset clause at all, should be implemented, or do you think that a phased approach is the best way forward, which means that it is hard to pick a date?

**Gareth Hateley:** First, I will answer the question, and then we can provide a written response on the current plans in the BVA.

I would like to reflect on what other witnesses have said—they may wish to come back on this. You could almost call it a business uncertainty,

because we do not know—we are unsighted, because of the sheer volume of stuff, as to what the consequences will be, so it is very difficult to plan at this stage. I can give an indication of where our planning has got to, but the fact that about 80 per cent of what DEFRA deals with relates to EU law—and the figure for the devolved Administrations is about 80 per cent—tells you instantly that there is a lot of legislation to get through.

The frame is that it is a big ask, so the length of time will depend partly on the priority that the UK Government and the devolved Administrations give to particular issues. Until we have some dialogue and insight on that, it is difficult to put resource into an issue that may relate to our sector. It is the uncertainty of the situation that is preventing us from answering in more detail.

**Sarah Millar:** I think that it would be very dangerous to put any deadline on this, because we have already shown that we do not know what is coming round the corner. Covid came and disrupted absolutely everything, especially the preparation for EU exit. Therefore, with the current uncertainty in the wider geopolitical landscape, we want to make sure that we get this right, rather than rushing into something with a high level of unintended consequences.

**The Convener:** I think that everybody's views have been aired, so unless anyone has anything more to add, we will move on to questions from Mr Cameron.

**Donald Cameron:** I have two questions, which are basically variations on Mark Ruskell's question. There is speculation in the media that, if there is to be an extension, the date will be 2026. That is four years from now. Notwithstanding what has just been said, would most people be in favour of that date? I accept that some people do not want any date or have fundamental issues with the bill. That is my first question.

My second question is about engagement with the Scottish Government, which Elspeth Macdonald spoke about. Has there been any contact or engagement with the Scottish Government, given that, under the bill, it will have the ability to restate retained EU law? Obviously, there are devolved competencies involved. In the light of our understanding that it is the Scottish Government's policy to align with EU law, has there been any engagement with the Scottish Government and/or its agencies?

**Jonnie Hall:** Certainly, at official level, I have had some initial discussions with the Scottish Government on that. To go back to your first question, I have shared some concerns around the implications of a sunset clause and the possibility of an extension. I feel that dates are

arbitrary and that they mean that we become something of a hostage to fortune, in the same way that happens with Government targets.

Engagement with the Scottish Government is under way, and I think that that will be critical.

**Julie Hesketh-Laird:** Like Jonnie Hall, we do not support a sunset clause at all. It is arbitrary. How do you choose between 2023, 2026, 2029 or 2030? I would rather start from the beginning and work through good rules than have arbitrary guillotines on perfectly good rules that already exist.

On engagement with the Scottish Government, we are a non-ministerial department, so we work quite closely with the Government. We are talking to it all the time about these issues. It is setting up some internal governance and we are beginning to get involved in some of its work. We have our legal advisers working with its legal advisers to look at the raft of legislation that could be impacted, affected or sunsetted by the bill. We are involved in its governance arrangements.

Next week, we will take a paper to our board to consider how we advise the Government on which bills should fit in which bucket and which are the most difficult to unpick. The decisions on which ones they go with sit with the Government—they are for ministers to decide—but our advice will be based on principles that we are beginning to develop on how we would help them to choose the right ones to keep or to sunset. Obviously, consumer protection is one of the core tenets of the paper that we will take to our board next week.

We are also in close touch with the Food Standards Agency, because it is in the same boat as us on all this. It will be talking to its Government departments down south, but it is in the same position as us, in that it is already running very fast to manage some of the implications of EU exit that we are still having to catch up with and to replicate systems from the EU. Like us, it is really short of resource to manage this. We have a number of people internally looking at this at Food Standards Scotland, but we have nowhere near the kind of capacity that I would like us to have.

If we were to need more resource, we would have to have a difficult conversation with ministers about whether they could fund us better to do this work and, if not, what they would like us to drop and to stop doing in future if they want us to work this through to whatever arbitrary deadline is picked in the bill.

**Ian Muirhead:** We concur with everybody's view that the idea of an arbitrary deadline would be suboptimal, to put it politely.

I go back to what I said in my opening comments about the context that we find

ourselves in. As a trade association, we are under a lot of resource pressure and our members are under a lot of pressure because the past few years have been really difficult as a result of Covid, on-going EU exit and now what I would term the cost of production crisis for our members and everybody in the supply chain. Industry is dealing with a lot at the moment, and added business uncertainty and the increased resources that would be required in this area would not be welcomed.

As I said previously, we want there to be more of an—I do not want to use the phrase “ad hoc process”—on-going review of EU retained legislation so that we can take the approach of prioritising what needs to be looked at first by industry.

Realistically—to go back to the question that Mark Ruskell posed about stakeholder engagement—it is pretty obvious that, with the current 13-month deadline, it is not possible to have meaningful stakeholder engagement. Many of us have been involved with the agriculture bill consultation and the previous iterations of that. The fact that there has been stakeholder engagement on that for at least a four-year period gives you a bit of context.

**Elsbeth Macdonald:** Dates are arbitrary and what is more important is that we have a process of careful policy analysis and working out the priorities in terms of where we want and need to change. We have been doing some of that work in our organisation for some time before the introduction of the bill in order to see what parts of the EU body of fisheries management we would like to be changed. We need a commitment from Government to moving away from the common fisheries policy and to seeing that process continue.

I did not want to give the impression that we had not had any discussion with Government about these issues. We have spoken with DEFRA and other parts of the UK Government, such as the Scotland Office, and with the Scottish Government about the fact that the bill is making its way through Parliament and that there will be implications, but we have not yet had detailed discussions about what that entails.

I echo the point that Jonnie Hall made about BEIS. I sometimes pick up frustration in other parts of the UK Government and a sense that there might need to be more joined-up Government thinking about the consequences of such bills. It is important that there is greater engagement with BEIS about the implications of the bill and the scope for unintended consequences if the process is not done right.

**Sarah Boyack:** From reading your submissions and listening to you today, it is clear that 2023 would be a massive cliff edge and that 2026 would still be a cliff edge, because it is not that far off.

What do the witnesses think about taking the opposite approach, which I think one of you mentioned, whereby, instead of dumping everything, we keep everything and then decide what we want to get rid of for flexibility? That would be a much more prioritised and much less risky approach, which would give you the opportunity to seek opportunities rather than taking the risk of putting environmental health, human health or animal health at risk as a result of huge uncertainty.

**The Convener:** Julie Hesketh-Laird has already addressed that. Does anyone else want to—

**Jonnie Hall:** We would support that.

**The Convener:** That is supported unanimously around the room—or maybe not.

**Elsbeth Macdonald:** We would have to be mindful of the need not to get into a state of inertia and not to allow domestic policies in other areas to take effort away from giving this matter the attention that it needs. There is good reason, certainly in my area, for why we need divergence, but we must make sure that we get it right. It is more important to get it right than to get it fast, so it has to be done properly. However, we must be mindful of the fact that if we push these things into the long grass, other things come along and get in the way. I offer that caveat.

**Sarah Boyack:** That is a very important caveat. Reflecting on the evidence about the sheer scale of the number of pieces of legislation that there are to review, that would let stakeholders and advisers prioritise where they want to take the opportunity, rather than face the panic that people will clearly face very shortly.

**The Convener:** I think that committee members have exhausted their questions.

I thank everyone for attending. It has been a really interesting and engaging session, and I echo members' thanks for all the written submissions that you provided as evidence prior to today's meeting.

The committee will now move into private session.

10:43

*Meeting continued in private until 10:55.*



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