



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Environment, Climate Change and Land Reform Committee

**Tuesday 8 May 2018**

**Session 5**



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**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**  
**15<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Graeme Dey (Angus South) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)

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

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

\*Richard Lyle (Uddingston and Bellshill) (SNP)

\*Angus MacDonald (Falkirk East) (SNP)

Gil Paterson (Clydebank and Milngavie) (SNP)

\*Alex Rowley (Mid Scotland and Fife) (Lab)

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

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

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

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

Dr Sara Grainger (Scottish Government)

Ian Jardine (Scottish Government)

Dr Tom Russon (Scottish Government)

Andrew Voas (Scottish Government)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Environment, Climate Change and Land Reform Committee

Tuesday 8 May 2018

[The Convener opened the meeting at 09:30]

#### Decisions on Taking Business in Private

**The Convener (Graeme Dey):** Good morning, and welcome to the 15th meeting in 2018 of the Environment, Climate Change and Land Reform Committee. We have apologies from Gil Paterson and we may be joined by Joan McAlpine in her role as a substitute member of the committee. I remind everyone present to switch off mobile phones and other electronic devices, as they may affect the broadcasting system.

The first item on the agenda is for the committee to consider whether to take items 5 and 6 in private. Do members agree to take those items in private?

**Members** *indicated agreement.*

**The Convener:** The second item on the agenda is for the committee to consider whether to consider evidence, draft correspondence and draft reports on its inquiry into European Union environmental and animal welfare principles in private at future meetings. Do members agree to take those in private?

**Members** *indicated agreement.*

## EU Environmental and Animal Welfare Principles Inquiry

09:31

**The Convener:** The third item on the agenda is to take evidence as part of our inquiry on European Union environmental and animal welfare principles. We are joined by Cabinet Secretary Roseanna Cunningham and her officials, who are Ian Jardine, Andrew Voas and Kate Thomson-McDermott. Good morning, cabinet secretary. Unless you particularly want to say anything, we will move straight to questions.

**Mark Ruskell (Mid Scotland and Fife) (Green):** To kick things off, I will ask a question about the principle of animal sentience. I am aware of the United Kingdom draft animal welfare (sentencing and recognition of sentience) bill and that there have been discussions between the UK and Scottish Governments about the provision on sentience in the bill and how it will apply to our laws. Will you give me an update on where the negotiations and discussions are on that?

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** The issue has not been discussed at ministerial level in meetings with the Department for Environment, Food and Rural Affairs, but what it means has been discussed extensively at official level. The issue has been driven by a House of Lords committee. The original discussion came as a result of an amendment that the House of Lords wanted to make to the UK European Union (Withdrawal) Bill, so it has arisen in a rather roundabout way.

As the member probably knows, and as I have said in the chamber, there is existing Scottish legislation that touches on the issue, although it does not use the word "sentience" because that term is a more modern understanding of the issue. There is existing legislation without that explicit statement, although all Scottish animal welfare legislation continues to be based on the recognition that vertebrate animals can experience suffering. I think that it is such a fundamental part of animal science that it probably does not need much elaboration.

On what is happening with regard to the UK as opposed to the Scottish position, we are trying to ensure that there is a clear understanding of the difference between a scientific concept of sentience, which is a very particular thing—although we believe that it is already recognised in Scots law—and an obligation on Governments to recognise the welfare requirements of those animals when we are developing policy and legislation. That is a slightly different emphasis.

We think that the understanding of sentience is already there. The issue might be the extent to which it is then imported into law explicitly or implicitly, and that is where most of the debate has landed in reality.

In principle, we accept that there should be obligations on the Scottish ministers to consider animal welfare needs in developing policy and that those may apply to UK Government ministers in future, although obviously we are not in control of that aspect. That comes out of the Treaty on the Functioning of the European Union. The issue arose here specifically because of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill and the fact that we are leaving the EU. A lot of the questions and discussions are on-going and we are not 100 per cent clear on what the UK intends to do. We have therefore adopted the principle in the continuity bill and we need to think about how that is taken forward. That is about importing the obligation to have regard to these things rather than the actual issue of sentience itself, which we feel is already embedded in Scots law.

**Mark Ruskell:** From what I am hearing, the intention is to make it more explicit in law. That could be done through the Westminster draft bill. Is it an intention to bring elements of that provision into Scots law to strengthen what we already have?

**Roseanna Cunningham:** If there was a Westminster bill and a legislative consent motion, we would not do it separately in Scots law. If that route was chosen, we would not do both, if you see what I mean—one would supersede the other. In principle we think that, following Brexit, there should be the obligation that currently exists under the EU set-up. There are different ways to do that. We could use our continuity legislation or a future UK bill with an LCM but, if we thought that neither of those routes would achieve the aim, we would have to consider whether more specific Scottish legislation was required. That is where we are at the moment. It is still a live on-going discussion.

**Mark Ruskell:** Given that there is a range of animal welfare legislative proposals from the Scottish Government, is it your intention to bring those together into a single bill or to continue to take a piecemeal approach?

**Roseanna Cunningham:** We have not made a commitment to try to bring that all into a single bill. That would be a fairly hefty undertaking that could not be done easily or within the lifetime of this session of Parliament.

**Andrew Voas (Scottish Government):** Because so much of it is in secondary legislation, it would be big for us.

**Mark Ruskell:** To summarise, I take it that there is no difference between the Scottish Government's and the UK Government's approach to animal sentience and welfare. We have seen quite a different tone in relation to live animal exports. Are you adopting the same approach to animal welfare and sentience as that of the Westminster Government?

**Roseanna Cunningham:** Insofar as we know what the Westminster Government is intending to do, we presume so, but at the moment we do not have enough actual detail. There was an amendment that came out of a House of Lords discussion and, as I said, we are not having ministerial level discussions about animal welfare. Some things are happening at UK level, and there is a different programme of animal welfare work going on in Scotland. The issue is about continuing the obligations that we currently have under the EU. We want to ensure that those will continue. We would have to consider whether anything that the UK Government did fitted with that, and then decide whether an LCM was appropriate in those circumstances or whether we would want to find a specifically Scottish legislative vehicle. There are issues. The existence of Scots law and case law and all the rest of it means that one has to look quite carefully at that.

**The Convener:** Let us move on to environmental principles.

**Roseanna Cunningham:** Sorry, convener, but can Andrew Voas now leave?

**The Convener:** Of course.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I have a chunky bit of stuff that I want to ask about, and I will ask it all in a oner, to simplify, which may require somebody to take notes.

First, what role will environmental principles have in the way that we develop policy and construct legislation? I am looking to see whether environmental principles will be essential for maintaining Scotland's environmental achievements. I recognise that the continuity bill refers to that. Secondly, what advice has the round table on environment and climate change provided in that context and will a report be published? Finally, in practice, what will be the difference between the EU-derived domestic legislation that incorporates environmental principles and other bits of our environmental legislation that do not make an explicit reference to that?

That is a fair when of questions, but I thought that it would be useful to ask them in that way, as that allows you to answer in whatever order you choose.

**The Convener:** How good is your memory, cabinet secretary?

**Stewart Stevenson:** I saw notes being written.

**Roseanna Cunningham:** It is dangerous to ask such an open-ended question.

I have been making it clear since the get-go—that is, after the referendum on Brexit—that we want to adopt the environmental principles and ensure that they continue to form the basis of what we do in Scotland, as is the case under the EU. I did not then and I do not now envisage any departure from what we are already obliged to do under the EU. My concern is to ensure that that is made safe for Scotland, in whatever way that might be done. I have been making very explicit commitments along those lines. About a year in, there was a slight nuancing of that when, after some conversations, we wanted to make it more explicit that, being concerned not to depart from those environmental principles as embedded in the EU, we will also look to continue to track what the EU does in respect of environmental issues.

For almost two years now, I have been making explicit and overt commitments—culminating in the discussions on the continuity bill and the debate on the withdrawal bill and all the rest of it—that we should find a way of legislating those set and agreed fundamental principles into Scots law. I feel that it is important that we do so. Obviously, there is a discussion to be had about it, and I know that some stakeholders will perhaps have different ideas in the consultation. The way that we are looking at it is that we might need to legislate more explicitly for something that we currently have as part of our legislative superstructure by virtue of being in the EU. Of course, as the committee will know, there are issues when we begin to talk about embedding something in legislation. There are complicated discussions about how robust definitions will be if we put them in legislation and whether there are other ways to do it.

I am committed to ensuring that the environmental principles continue to have a fundamental role in Scotland, that they are part of what we do and that they continue to sit at the heart of our approach, regardless of our future relationship with the EU. The issue is really about the best way of taking that forward. Legislating for it is not an easy process. I have already referred to some of the challenges that there would be, and discussions are needed.

I do not know whether that deals with the role part of the question.

09:45

**Stewart Stevenson:** Can I attempt to play back to you a summary of what I have taken from that?

What I have heard is that, if there is a lacuna in the law because European law ceases to apply and we have not yet legislated, the environmental principles that are currently derived from the EU will continue to inform the way that the Government proceeds, through acts and at secondary level under existing legislation.

**Roseanna Cunningham:** Absolutely.

**Stewart Stevenson:** Beyond that, it is the intention to find an appropriate way to incorporate the principles into the law that affects Scotland. Those are the two bits that I have taken from what I have heard.

**Roseanna Cunningham:** That is a reasonable summary. I do not think that it is misrepresenting anything.

We do not know about the timing at the moment, so there may need to be an earlier iteration. I may be getting this wrong—I read so much stuff, so I sometimes pick up things that are not exactly on point—but I think that there is a discussion at UK level about a national policy framework rather than an actual legislative vehicle. Kate Thomson-McDermott is looking a bit puzzled. We might have to have an interim position because, as everybody knows, legislation does not happen overnight. Legislating for the issue will be a significant undertaking, and we will also have to know how we will fix any interim period.

**Stewart Stevenson:** Can I take you back to the role of the round table on environment and climate change in relation to the environmental principles? You have not made direct reference to that. Does the round table have a role in that regard? Is it helping, and will it continue to help, in advance of any legislation, which you said is not currently timetabled?

**Roseanna Cunningham:** The role of the round table is important. It has given us a reasonable amount of advice in relation to the principles and potential governance. I had the draft report only the day before my last appearance—or the one before that—before the committee. The report is still being finalised and is an on-going piece of work. We expect the round table to continue in being for some considerable time, so that it can give us useful advice.

**Stewart Stevenson:** How will the Parliament see the outcomes of the round table's deliberations?

**Roseanna Cunningham:** We intend to publish them. The report was in draft form on 19 March and is currently being worked on; the final report will be published. People will get to see that, and it might be of interest to the committee to have a look at it, in a future meeting.

I can elaborate on the areas of advice that the round table has flagged up. It is in the process of finalising advice on monitoring, measuring and reporting of environmental data, and on the implementation of environmental law. It will provide advice on the scrutiny of reports and the preparation of independent assessments and reports that examine environmental compliance. It is looking at the initiation of investigations, cross-cutting studies and reports. It is looking at mechanisms whereby individuals or organisations can make complaints regarding the application of environmental law, and it is looking at mechanisms for seeking solutions to concerns about the implementation of environmental law, through interaction with Government.

The round table is also looking at powers to refer a public body to some kind of court or other group for alleged failure of implementation, powers to order interim measures to prevent irreversible damage before judgment is handed down, and powers to require Government to take action to bring it into compliance, with the power to impose sanctions if action is not taken. Those are all the areas that the round table is looking at, and detailed advice on them will be published.

Fact checking on the draft report is going on at the moment across the whole of Government, as well as in the round table. It is important to say that some of what the round table is looking at will very much cross over from my portfolio responsibilities into justice portfolio responsibilities; it is not going to be just for one committee or one portfolio.

The round table's work is quite complex. My guess is that it will be regarded as a starting point rather than an end point, but we are looking closely at the issues and we have asked the round table to do so, too. I have set out the work that it is doing and what it is considering giving advice on; that is what you can expect to be discussed when the final report is published. I am talking about not recommendations but the areas that the round table is looking at.

**The Convener:** That sounds like a fairly extensive piece of work.

**Roseanna Cunningham:** It is.

**The Convener:** Do you have an indication as to when the report might be published?

**Roseanna Cunningham:** The draft is already there, so I think that it will be before summer.

**Ian Jardine (Scottish Government):** Yes, the round table is aiming for the end of the month.

**Roseanna Cunningham:** That is not far off. I think that our commitment to consult runs out somewhere around September or October, in terms of timescale, with the indications in the

continuity bill. The round table report will be part of that, rather than sitting separately and appearing at the last minute.

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

**(Con):** I want to go back to some of your earlier comments. In February, Michael Gove committed to putting environmental principles in a policy statement, to ensure that they continue to be set out in a single place. After our call for evidence, a number of respondents suggested that it is important that a similar approach be taken across the UK, to ensure consistency. Does the Scottish Government consider that there should be a UK-wide approach to environmental principles and law across the UK, to ensure consistency?

**Roseanna Cunningham:** It would be helpful if we were all singing from the same hymn sheet. Environmental policy is devolved, so we will be making our own decisions. It is interesting that Michael Gove gave a commitment to a national policy statement and not to legislation. We are looking at something stronger than that.

One might argue that the two years' worth of explicit commitments that I have given are, in effect, a national policy statement. We have not actually framed it in that way, but that could easily be done in fairly short order. From our perspective, we do not just want to consider a national policy statement as the way forward; we want to be more explicit about potentially legislating. I think that I made a fleeting reference to an interim issue and a longer-term issue. Potentially, the national policy statement idea is for the shorter term while we look at whether legislation in this regard is manageable.

You asked whether there can be a UK-wide approach. Yes, as long as the principles are seen as the least that we can do—the basic fundamentals. I do not want to be held back in any way in Scotland; we want to continue to have the freedom to make stronger environmental statements if we want to do so.

**The Convener:** Has there been any dialogue with the UK Government on that?

**Roseanna Cunningham:** A bit of discussion has been going on—initially between ourselves and Wales—on agreeing principles, and there is an on-going conversation with the UK Government about what they might look like. In fact, we initiated that discussion, but it is not finalised yet—it is on-going. As is always the case, we end up discussing what specific phrases mean. As the committee knows, that is often what happens; one ends up in a slightly more protracted conversation than perhaps was originally envisaged.

**John Scott (Ayr) (Con):** Can I take you back to environmental principles and international law? What would be the effect of relying on the



inclusion of environmental principles in international law, post Brexit?

**Roseanna Cunningham:** The UK is currently signed up to a considerable number of international environmental agreements—I am not sure of the specific number but I know that it is more than 40—on matters that range from climate change, wildlife and habitat protection to waste movement, air pollution and so on. Those international environmental agreements will continue to provide a strong framework for Scotland, because they do not fly off after Brexit. They will continue to provide some of the superstructure that we are talking about.

I am of the view that in Scotland we should continue to do what we currently do, which is to collaborate and demonstrate leadership on the international stage. We work quite hard at international engagement at the moment. We very much want the UK to remain party to all those international environmental agreements, even after Brexit.

One of the things that we have to do is look at the potential gap between EU law and international law. In effect, that is where the environmental principles will have a particularly strong impact, because they do not just come from the EU; they are fairly well understood internationally—there is an international language that countries choose to adopt, to give the sense that we are all coming from the same place. I think that that will continue to be extremely important, but we will have to look very carefully at what might be a different gap—the gap between the EU set-up and the international set-up.

For example, in the marine environment we have international obligations, which do not come solely from our being a member of the EU—they are bigger and broader than that. Scotland already has a fair amount of direct engagement with international groups and is thinking about our international obligations. We want to be able to continue to do that.

10:00

**John Scott:** I dare say that you have seen the evidence that we have received, most of which agrees that environmental principles should be put on a statutory footing in Scots law. The Law Society of Scotland is slightly more circumspect about that, suggesting that the principles could instead be included in a Scottish Government policy statement.

**Roseanna Cunningham:** I understand where the lawyers will be coming from. There is a constant discussion, debate and tension, not just in committees but in the chamber, about the fact that, the minute that we move to put something

into legislation, there is a very big discussion and an onus on us to ensure that the words that we use in legislation mean what they say and are understood to mean that when matters move away from legislation and end up in court or whatever.

I suspect that the Law Society—although it does not necessarily use this language and I do not want to presume to speak for it—might be concerned that there is a difference between legislating for an aspiration and legislating for an actuality. Legislating for an aspiration is fine in theory; however, in practice, legislation is about concrete realities and potentially actionable issues. An aspiration does not fit as easily into that. I do not want to put words into Michael Gove's mouth but that may be why he has opted for the idea of a national policy statement rather than legislation.

I do not want to rule out legislation. Clearly, if we were to go down that road, there would have to be some very careful discussions with, among others, the Law Society. The committee knows very well from experience that trying to define things is much harder in practice than you imagine it will be. I think that the Law Society always provides a caveat for us, to ensure that we understand that.

**John Scott:** You are not dismissing it, at any rate.

**Roseanna Cunningham:** I would never dismiss what the Law Society has to say. As a lawyer, I have a fundamental understanding of where it is coming from.

**John Scott:** That is understood, cabinet secretary. The other questions that I had have already been covered. There has been a suggestion that incorporating or creating new legislation that must have regard to the principles would be another way forward. However, from what you are saying, the whole thing is still in flux.

**Roseanna Cunningham:** It is. I do not want to prejudge any consultation, and there is a pretty reasonably sized debate to be had about some of this. Even if we were to go forward with legislation, that would not happen in the very near future; it would take a fair amount of time to bring that to Parliament, and we would probably want to do something in the interim period. There is a lot to discuss, and we need to be very careful that we do the right thing.

**John Scott:** Do you have concerns about enshrining one principle and not another? Do you see a hierarchy of principles?

**Roseanna Cunningham:** I do not think that we can drop one, two or three of the four principles and enshrine only one legislatively without picking up the others. I do not think that that would work. We treat them as a whole rather than individually,

and I certainly have never viewed them as having some kind of hierarchical status, as if there were a ranking among the four. I do not see that.

**John Scott:** Forgive me—I did not mean that. I was talking about enshrining the environmental principles as opposed to other principles that come from Europe.

**Roseanna Cunningham:** That would be part of a conversation that might be had, because there are a great many other principles. That takes us back to the utility of legislating for something that is seen by many people as being more aspirational. There is a big area in between those two end points.

**The Convener:** The principles would include subsidiarity and proportionality, for example.

**Roseanna Cunningham:** Indeed, but I am talking about environmental principles. If there was to be discussion about trying to legislate or make some kind of formal reference to other EU principles that were not environmental principles, you would need to speak to other cabinet secretaries about that.

**Donald Cameron (Highlands and Islands) (Con):** Stewart Stevenson touched on this. Do you have any concerns about a difference opening up between EU-derived legislation that incorporates environmental principles and Scottish environmental legislation that is currently in force, but that does not incorporate those principles?

**Roseanna Cunningham:** Do you mean legislation that predates the—

**Donald Cameron:** Yes.

**Roseanna Cunningham:** Well asked. That would speak to some kind of consolidation in the future, which would be a huge undertaking. We would need to look at how that might be managed. I suppose that you could find a way to reach out and pull that legislation in, but we are where we are, to a certain extent, with some of that.

The question goes back to the question that Mark Ruskell asked about animal welfare, only in an even bigger context, because that kind of consolidation would not be an easy process. Anybody who has ever been involved in, or had any relationship with, efforts to produce a piece of consolidated legislation knows that it is quite a long-term process. It is an interesting question, though, and one that we will need to reflect on.

**The Convener:** I hear what you say about how complex this all is, cabinet secretary, but can I add to the complexity by asking another question? Has any thought been given to whether a non-regression principle might be required post-Brexit?

**Roseanna Cunningham:** I saw reference to what was talked about, and it looked as though

another four principles were lurking that might be added. In fairness, however, in dealing with the situation that we are in, our priority has to be to find a way of ensuring that, post-Brexit, Scotland is committed to the existing four principles. There may be a longer discussion to be had and a bigger piece of work to be done that addresses other potential environmental principles, but, for the sake of achieving what we need to achieve in the timescale in which we need to achieve it, we have not really given detailed consideration to adding other things. We are looking at the four environmental principles that, at present, everybody understands to be the ones that prevail.

**Mark Ruskell:** Let us turn to how the principles relate to trade and trade policy across the UK. We have had some interesting evidence on that. Some witnesses have suggested that the incorporation of the principles into Scots law would, in effect, provide a backstop to any deregulation of food standards or the environment, for example. However, some evidence that we received last week suggested that the principles on their own are too broad and that, in the negotiation of any trade deal between, say, the United States and the UK, the interpretation of, say, the precautionary principle may be very different. Where do you see the environmental principles sitting in any international trade deal? What discussions, if any, have there been with the UK Government on that?

**Roseanna Cunningham:** Trade issues have been part of live discussions for a considerable time, so we are not blind to what might be raised under that heading. Environmental protections are key aspects of trade policy, but they will always have been so—every EU trade deal that has been done will have involved an active conversation about those protections, and they have been an extremely controversial aspect of some potential trade deals. It would be naive to assume that that will not continue to be the case. There is, though, an issue about where are we now, as we are going to lose the superstructure of EU law that embeds the four principles that we have been discussing. We want to find a way of ensuring that Scotland continues to have those principles as part and parcel of what we do, but in doing that we are not moving beyond what already is the situation in the EU.

What we are trying to do—what I have explicitly said that we will do—is continue to have the principles as a backstop, to use your word. Would that necessarily mean that there will not be debates about them? I could not possibly say that that would be the case, because there have been such debates all the time when the EU has negotiated trade agreements.

In the original publication "Scotland's Place in Europe", we set out the need for high environmental standards and robust regulations not just for businesses but for our citizens as well, and that will continue to be where we want to be. Nevertheless, as most members here will be aware, that constitutes some of the current discussion about the list of 153 powers, in which there is argument about where competency lies. There is a fairly lively political debate on the extent to which Scotland will, in the future, be able to stand by its environmental laws. That conversation is taking place at a number of different levels, as the member is probably aware.

**Mark Ruskell:** Do you have any particular views on how a trade deal could be scrutinised in relation to the environmental principles? You seem to be suggesting that there would be considerable uncertainty and perhaps some areas of public alarm in the context of trade deals.

**Roseanna Cunningham:** All that I am pointing out is that every trade deal that the EU has negotiated has involved a conversation on such issues. Some principles have been more controversial than others. The four principles being fundamentally part of what we do does not somehow magically whisk away any debates about trade deals, and I do not suppose for one single minute that that will not continue to be the case. Supposing that Scotland does what we want to do with the four environmental principles, and supposing that there is no Westminster override, the controversy will still not disappear. At the end of the day, it depends on who has the final word on it.

**Mark Ruskell:** Could a trade deal at the UK level prevent the EU principles from being included in Scots law? Could it act as a block, and do you foresee that happening?

**Roseanna Cunningham:** I would be astonished if there was any attempt to prevent our putting the principles into Scots law in whatever way we decided to do that, whether it was through a national policy statement or legislation. The arguments about the application of those principles would be about what happened in the trade deals. I am fairly confident that it is unlikely that I will be invited to sit around the table at any discussions in the negotiation of those trade deals.

10:15

**Mark Ruskell:** You never know. Perhaps you should.

**Roseanna Cunningham:** I am trying to be realistic.

**John Scott:** In reference to Mark Ruskell's last question, is there a threat or a risk that the

adoption of more stringent environmental principles and regulation into Scots law could limit Scotland's ability to compete on a level playing field with other parts of the UK in a trade deal?

**Roseanna Cunningham:** That would depend on where you wanted to put the level playing field. If the level playing field is that we toss all our environmental regulation and principles out of the window, frankly, that is not where I want to be. What having a level playing field means is a bigger question for discussion, and I think that the four principles that we are talking about are pretty widely understood internationally and globally. They are not things that we have dreamed up in the past year or two; they are things that have already been part and parcel of every negotiation that the EU has ever been involved in.

I am not blind to the fact that it is an irritation to some countries that the EU has stuck quite tightly to the four principles. There may be an attempt to remove some of their application, but I think that we would want to resist that. The point about the environmental principles is that they are pretty fundamental, pretty widely understood and part of the international language and understanding of how we should proceed. I very much hope that any trade deal that is struck in the future will continue to have them as part of what is discussed.

**John Scott:** I declare an interest as a farmer. I am not concerned about the principles. What concerns me is the granular detail of them concerning things like genetically modified crops and how that might work against Scotland's ability to compete in international trade deals if other countries are growing GM crops and we are not.

**Roseanna Cunningham:** In the past 10 years or so, Scotland's food and drink sector has seen an absolutely huge increase in exports. The thriving premium business that we do, selling on a very strong image of Scotland, suggests quite the opposite of what you suggest.

**Finlay Carson:** I would like to move on to enforcement. It is obviously important that enforcement mechanisms are introduced to ensure compliance with the principles, when and if they are incorporated into Scots law. What consideration has the Government given to enforcement and dispute resolution mechanisms?

**Roseanna Cunningham:** I have outlined what the round table is giving us advice on, and it is very much on point with that. In the main, that is the area that it has been looking quite hard at, although I cannot say whether it will try to give us formal recommendations or simply give us a suite of potential solutions. Ian Jardine is a bit more intimately involved in that work and may be able to say more, but that is very much the area in which

the round table is working. I flag up what I said earlier: some of the proposals are likely not to be for my portfolio to decide and may be for a different portfolio.

**Ian Jardine:** The round table report sets out options for plugging any potential gaps in governance; it does not recommend what the right answer is.

**Roseanna Cunningham:** It is important to remember that we have committed to a consultation on the principles and on governance and we are trying not to prejudge the outcome of that consultation, as there is likely to be a range of potential options. I understand some of them, but I am quite clear in my mind that the consultation on governance will have to include justice colleagues as well, which slightly complicates things—it is not just for us to look at. Work must be done with other Cabinet colleagues on the specifics; therefore, detailed questions will have to wait until we have a final indication from the round table of what it sees as the potential options and over what timescale those might be manageable.

**Finlay Carson:** Alongside the round table, have you had any discussions with the UK Government regarding a UK-wide enforcement body?

**Roseanna Cunningham:** Environmental policy is devolved to Wales and Scotland, but we are, of course, aware of the UK Government's potential consultation and have had some conversations about it. The UK Government has not yet published any consultation on environmental governance, although it must surely be reasonably imminent, but its proposed consultation document is for England only, not for the rest of the UK, precisely because environmental policy is devolved. There may be merit in having some conversations about certain things, but it comes back to the basis on which the decisions are taken and the understanding that environmental policy is devolved, that there are two other legislatures that have concerns about what the way forward might be and that each is quite different. Although Wales and Scotland have been having those discussions, the Welsh situation is quite different from ours.

**Claudia Beamish (South Scotland) (Lab):** I appreciate the points that you have already made, cabinet secretary, and the importance of highlighting to us that the justice portfolio will be involved in discussions, and what the significance is of the round table in the assessment of the legal aspects of enforcement and compliance. If appropriate, could you give us a sense of the discussions that are taking place with the Cabinet Secretary for Justice, and also more widely, on the possibility of enforcement and compliance being done within Scotland? As you have highlighted already, environment is a devolved area.

**Roseanna Cunningham:** When you say “more widely”, do you mean across Government?

**Claudia Beamish:** What sort of an independent body might relate to the Scottish Government, in the way that the Commission in Europe does? Will there be some form of body?

**Roseanna Cunningham:** That is one of the things that the round table—

**Claudia Beamish:** I am asking whether you could enlighten us, not on what the round table is doing, but on the Scottish Government's thoughts so far, because that will help us in our deliberations.

**Roseanna Cunningham:** The principal piece of work has been instructed by Government via the round table, and I am waiting on the final publication of its report. We have said that we will consult on that. When we see the range of options that the round table indicates that it thinks are appropriate, we will consider whether or not we think that some of them are more manageable than others, but that is where most of the work has gone.

I have had discussions with others about this, including some of the environmental non-governmental organisations in London. One of the difficulties that we have to overcome is that, notwithstanding this Parliament being nearly 20 years old, they still do not entirely understand the implications of devolved environmental policy. If you are thinking about the potential for some kind of UK-wide body, at the moment there is nothing specific under discussion and, as I indicated, the Westminster consultation will be for England only.

**Claudia Beamish:** I am specifically wondering whether, as part of the discussions—this has not been highlighted in relation to the round table—a Scottish enforcement body is being considered and also whether—

**Roseanna Cunningham:** The round table's report to us will cover that.

**Claudia Beamish:** I am asking whether that is being considered. We do not want to find, as a committee, that we get a report back and that that has not been considered. I ask you please to bear that in mind, as well as whether ordinary courts can be made to work effectively in an environmental context, and what the view is of the Scottish Government on the establishment of an environmental court or extension of the remit of the land court.

**Roseanna Cunningham:** I am not going to prejudge any of this.

**Claudia Beamish:** I am not asking you to. I am simply asking whether those issues are part of the discussions.

**Roseanna Cunningham:** There will be a range of options. The round table report will be published soon, well before the summer. The committee will be able to look at it and, in informing a potential consultation, the committee will have plenty of time to consider whether or not it thinks that something has been missed.

**Claudia Beamish:** I am trying to make the point, cabinet secretary—and I am not really making it very well—that surely, if these issues are not being considered now, it will be very late in the day. I am simply asking for reassurance that they are being considered.

**Roseanna Cunningham:** The round table was tasked with looking at gaps and coming up with solutions, so I think that it is fair to say that its consideration ranges across a huge number of options. I would be astonished if anybody managed to come up with yet another one that has not been looked at by the round table.

**The Convener:** Just to be clear, cabinet secretary, you talked earlier about the consultation and mentioned September. Would that be the beginning of the consultation or the end of it?

**Roseanna Cunningham:** I think that the commitment was made to consult within six months of the bill—and obviously there are issues—but we did a rough calculation and said that that would be the absolute end point for launching the consultation. The consultation itself would take—I do not know how long we will give it. There will be analysis and all the rest of it.

**The Convener:** It will kick off in September.

**Roseanna Cunningham:** Yes, but you have to have a bit of space to get a consultation up and running.

**Richard Lyle (Uddingston and Bellshill) (SNP):** I have two questions. To ensure clarity, I will not lump them together. What is the view of the Scottish Government on the appointment of an environmental ombudsman or commissioner and their role in dispute resolution?

**Roseanna Cunningham:** I am sorry, I will not prejudge any of these issues. I suspect that that is the kind of thing that will be included in the range of options that the round table will present and we will have to see what it has to say. These are all potential solutions. They may not all be potential solutions on their own. There may need to be more than one way to do this. There may need to be interim processes before we can go to a full-blown solution, simply to make sure that there is not an interim gap. There are many different ways to do this and I do not want to prejudge the consultation.

**Richard Lyle:** How does the Scottish Government consider that third-party interests

could effectively be taken account of in the framework and mechanisms for enforcement and dispute resolution?

**Roseanna Cunningham:** That would have to be dealt with throughout the consultation, because it would be very much part of how things actually work. I have said that there is likely to be a huge range of options and people will need to look at which options give greater comfort in terms of access than others. All the options will have their access issues.

**Richard Lyle:** Thanks for that clarity.

**The Convener:** We have been talking about enforcement and solutions, but I will touch on what is perhaps an opportunity to increase transparency on some of this. For example, there is a suggestion kicking around out there that there should be a duty on the Scottish ministers—it could perhaps be extended to other agencies, including, for example, those local authorities that are not in the control of the Scottish Government—to report on the extent to which the environmental principles have been considered in arriving at a decision; for example, the precautionary principle. What are your thoughts on that?

10:30

**Roseanna Cunningham:** On every decision?

**The Convener:** Every significant decision, certainly.

**Roseanna Cunningham:** My immediate reaction to that is that it is interesting. I suppose that it might be like the statements that go with a bill introduction: there are various indications and memoranda that show that certain things have been looked at and taken into consideration.

Define “significant decision”. I think that that is where you would get into the issue.

**The Convener:** It might perhaps be any decision that had an impact on the environment. Some people might look for a local authority to be required to indicate the extent to which it had deployed the precautionary principle in reaching a decision concerning a major fish farm, for example. That is just one example. There has been a conversation in the background about whether this process presents an opportunity to provide that kind of transparency and that kind of confidence in decisions that have been arrived at.

**Roseanna Cunningham:** I will point out one of the dangers that we might get into here. We are where we are because Brexit is a looming deadline and we need to ensure that we can manage without major disruption. There is clearly another discussion going on that says, “Here is an

opportunity to come up with a whole lot of other things to add to this.” I guess that I am just cautioning that the more that we add, the longer this will take and the more complicated it will be. While I would not necessarily rule out conversations on some of these things, it may slow down the whole process if we have them.

Let us just have a think about timescales. I think that if you were talking about the potential for going to legislation—that is probably a discussion that would be very germane—we would be back to the question of definitions. How do we designate something as significant enough to trigger such a duty?

**The Convener:** Is there any possibility that the round table and the consultation process may in the end produce some recommendations for the here and now, as well as recommendations for some future date?

**Roseanna Cunningham:** We would find it quite helpful if people looking at this, both within the Parliament and externally, thought about the timescales, both the more immediate challenge that we face and the medium and longer-term opportunities that might arise out of some of the potential solutions. I think that it is a case of seeing that what we choose to do in the shorter term is not necessarily the be-all and end-all, but that we still need to do it.

**Alex Rowley (Mid Scotland and Fife) (Lab):** Given your last statement, cabinet secretary, are you confident that Government has the capacity to achieve what we have now—the minimum, if you like—in the timescales that are available? Specifically, do you have the capacity and the resources to be able to make that happen?

**Roseanna Cunningham:** That is a good question. Brexit has put a huge amount of extra work on to civil servants that, two years ago, we could hardly have anticipated. There will be a huge amount of work getting subordinate legislation into shape, and I think that there has already been some discussion about how that will have to be managed through committees. It is not just about the Government’s capacity, it is also about parliamentary capacity to manage all this. That is why I have been careful in most of my conversations to talk first about the shorter term and the more immediate challenge that is faced to ensure that we are in a manageable state, and then about the potential for longer-term fixes. My guess is that we will be dealing with the consequences of Brexit for many, many years to come.

**The Convener:** I think that all the committee members have covered what they wanted to. Cabinet secretary, I thank you and your officials. That discussion has been quite useful. I will

suspend for five minutes before we resume with you and different supporting officials. Thank you.

10:34

*Meeting suspended.*

10:41

*On resuming—*

## Climate Change Bill

### Committee on Climate Change Advice

**The Convener:** Welcome back to the meeting. The fourth item on our agenda this morning is to take evidence on the advice of the Committee on Climate Change on the Scottish Government's forthcoming climate change bill. The Cabinet Secretary for Environment, Climate Change and Land Reform wrote to the committee offering to discuss the advice, and we are pleased to welcome her today, along with officials Dr Sara Grainger and Dr Tom Russon. Cabinet secretary, do you want to say a few words to kick things off?

**Roseanna Cunningham:** Yes, convener. I want to say a few words about a very specific aspect of the forthcoming climate change targets bill, and that is the Committee on Climate Change's advice on the design of the target framework.

Every year when the emission statistics are published, indicating whether the latest year's target has been met or missed, there is always some debate about whether the result has been because of action taken or because of technical changes to the way the emissions inventory is compiled. It is vital that statutory climate targets allow Governments to be held to account for actions taken. It is also vital that we use the best evidence available at any given time, and that creates a problem.

Improvements to the science of emissions measurement lead to changes in our best estimates of Scotland's emissions. It is not just recent years' estimates that get updated; the estimates of emission levels right back to 1990—the baseline for our targets—are constantly being revised as well. Those data revisions, when large, pose challenges to the transparency with which Governments can be held to account. Put bluntly, targets can be either met or missed solely due to the data revisions.

When we consulted on the proposals for the new bill in summer last year, we proposed that all targets should be in the form of percentage reductions from the baseline. Under the Climate Change (Scotland) Act 2009, some targets are set as percentages and some as fixed amounts of emissions. One of the reasons for the proposed change is that percentage targets are less liable to be met, or missed, solely as a result of data revisions.

However, it has subsequently become apparent that such a simple solution may not be sufficient. If the data revisions are very large or if they are

uneven between the baseline and the present day, even percentage-based targets could be met or missed simply as a result of those revisions. When I was made aware of that in autumn last year, I felt it was prudent to ask the Committee on Climate Change to update its advice on the target framework aspects of the bill. I wrote to Lord Deben to request his advice in October and I received it in late December, just before Christmas.

The CCC has used this opportunity to recommend further steps, beyond those it had set out in its initial advice, to stabilise Scotland's statutory target framework for future data revisions. They have provided an objective and relatively simple approach to managing the challenges posed by the volatility of emissions estimates, while also ensuring that we keep pace with the best available science. Their proposal is to freeze the measurement methods for up to five years at a time and assess whether the targets in those years are hit or missed using those frozen methods. In other words, whether a target is hit or missed will be assessed against the methods that were in place when the target was set. Every five years there will be a reset of the measurement methods and potentially the targets, too, so that we never get too far behind the evolving measurement science.

We intend to implement the CCC's recommendations in full in the bill. That will allow Parliament and stakeholders to hold Governments more clearly to account, as the goalposts will not move between the time when a target is set and the time when it is reported against. This is a fairly complicated issue, but I hope that it is an area where we can establish some early consensus.

**The Convener:** Thank you. John Scott will kick things off.

10:45

**John Scott:** I declare an interest as a farmer. What you have just said reminded me of what used to be said about the World Trade Organization negotiations—that if you are not confused, you have not been listening—but thank you very much for that statement.

My questions probably apply to the period before you reached the conclusions that you have come to. The Committee on Climate Change set out two options. Option 1 was to maintain the same level of ambition that is in the Climate Change (Scotland) Act 2009, with the setting of review points for subsequent reviews to increase targets, which you have talked about. Option 2 was:

“Set a ‘stretch’ target for a reduction in greenhouse gas emissions of 90% by 2050”.

The CCC noted:

“Setting more ambitious targets now to align to the aims of the Paris Agreement would require actions that are currently at the very limit of feasibility.”

It also said that option 2

“is at the limit of the pathways currently identified to reduce Scottish emissions ... The Committee has not, at this time, been able to calculate a total cost associated with a scenario that achieves this target.”

In the light of those statements, what are the benefits and risks of each of the two options?

**Roseanna Cunningham:** First, we have now embarked on the parliamentary process, so I cannot pre-announce the final decisions before the introduction of the new climate change bill. I needed to caveat what I am going to say with that.

We were confronted with the initial advice from the Committee on Climate Change, which arguably gave us the option of pretty much continuing on the current track, which is the longer-term 80 per cent target, or stretching to 90 per cent. At the moment, 80 per cent is, I think, where Westminster and Cardiff are at as well. The committee gave us the two options.

The decision about what to do is one in which we have to take into account how ambitious Scotland wants to be. In a sense, a lot of our decision making in this area is dictated by that desire to be ambitious. A benefit of taking a view that a stretched target is appropriate is that it would be consistent with the ambition with which we set out on this climate change trajectory right from the start.

What I cannot know is what Westminster or Cardiff will choose to do in terms of their targets. There was some discussion in the previous panel about the benefit of maintaining some form of UK-wide scenario, and there will be people who will argue that that is what should happen, because otherwise issues arise. We have to be very alive to the potential for carbon leakage if, not very far away, there is an arguably more relaxed regime.

We have to take those things into account when we are deciding how we will move forward. We have to make a decision not quite knowing what the rest of the UK is going to do and what the implications of their decisions may be on what we do, and we also have to make that decision in the context of our desire to continue to be ambitious.

I thought that the Committee on Climate Change was very fair and straightforward in the way that it put it: from its perspective, 80 per cent is a reasonable target to continue with and 90 per cent is a very stretched ambition. It was not saying that we should choose one or the other and it put it into our laps to decide what we would do. You will see

what we have chosen to do when the bill is published.

**John Scott:** I understand that it is absolutely within your gift to decide what to do. Of course, all of us around this table applaud ambition, but we are also aware of the risks to the economy of a more stringent environmental regime, which you have not spoken about. Do you have any thoughts on those risks?

**Roseanna Cunningham:** People need to understand the implications of what it is that they call for. I am not 100 per cent certain that everybody necessarily does understand them. I hope and anticipate that when the bill is introduced there will be a hefty debate about the practicalities around it. Rather than just having the idea of ambition for ambition's sake, we want to be crystal clear about the implications of the targets: what they will actually mean in real life.

We have regard to what some other countries are doing and how they are doing it, and we are looking very carefully at other examples when we make these considerations. I think I noted—and I can be corrected by officials if I have picked this up wrongly—that Norway has set a very short-term target for itself, to be achieved by 2030, but only if other countries around it do the same.

I think that most countries are in the same space. We are all hoping to progress at much the same speed, so that no country is hovering up because it has decided just to be a little bit more easy-going on these things. That is a very significant issue that has to be dealt with and talked through when we make our decisions about the headline climate change targets.

**John Scott:** I suppose that it would be dispiriting to make progress at the pace of the slowest. I would understand if a sense of frustration developed about that.

**Roseanna Cunningham:** Indeed. However, carbon leakage is a real problem and we cannot simply wish it away as a potential complication if everybody is in a different place. It is a tricky balance.

**John Scott:** You spoke of Norway. Do you have any other international examples of countries going beyond a 90 per cent target?

**The Convener:** They should be comparable examples, because there are perhaps countries that can get there by other means.

**Roseanna Cunningham:** Nobody is doing what we are doing. There is not another country that is doing it the way that we are doing it, with annual targets and very stringent rules around them. I suppose that the one that you are going to hear about most often is Sweden. Sweden has said that it will get to net zero greenhouse gas emissions



by, I think, 2050, but Sweden's measurements do not include, for example, a share of aviation emissions, a share of shipping emissions or, as I understand it, land use and land use change emissions, and it reserves the right to meet its target by buying international credits worth up to 15 per cent of its emissions. My estimation is that it anticipates achieving that by a domestic effort that is considerably lower than our domestic effort. We are committed to meeting our targets by a domestic effort.

It is not, in my view, a realistic comparison. Unless there are people around this table or in the Parliament who intend to lodge amendments along the Swedish model, we will not ever be in a place to amend any climate change bill to do what Sweden does. I will take a wild guess and say that such a set of amendments would not necessarily be very popular, which by itself gives the game away.

**John Scott:** That does not exactly sound like a ringing endorsement. Notwithstanding that, I suppose that the convener's question still stands. Are there better examples? Are we out in front in terms of ambition? It would be fine if we were.

**Roseanna Cunningham:** It depends on how you define it. We have just spoken about one country that will be seen as being out in front, but when you actually look at what it is doing, I am afraid that you see that things there do not stack up in quite the same way.

New Zealand has made a commitment to net zero, but there is no indication at the moment how New Zealand intends to achieve that, so I cannot say. There is not another legislature that has done anything analogous to what we are doing in terms of how tightly bound we are, how strict our set-up is and the extent to which we measure things that others simply will not measure.

**John Scott:** Tourism was in the news yesterday for having an 8 per cent carbon footprint. That was news to everybody, apparently; tourism had not been previously understood to have such a high impact. Have you any comments to make on that? I suppose that it will have been as much of a surprise to you as it appears to have been to everyone else.

**Roseanna Cunningham:** I missed that emerging news yesterday, although I heard some discussion on a news programme this morning about the different environmental impacts of different tourists. The impact is not the same across the board: for example, it will surprise nobody that tourists from wealthier countries have a bigger environmental impact because they are more likely to use cars and less likely to use public transport.

There is probably a lot more work to be done on the tourism impact. Equally, there might well be work to be done about how, on our side as a host country, we might reduce the necessity for tourists to have to make environmentally high-impact decisions.

Other than having heard a discussion this morning on the radio, however, I am afraid that I am not copied into all that. It is something that climate change officials will undoubtedly want to look at to see whether there is anything that we need to be reflecting on. From what I heard this morning, I think that we need to be a bit cautious about differential environmental impacts that depend on the kind of tourism and the countries that people come from.

**John Scott:** Absolutely.

**Alex Rowley:** You mentioned other countries. In looking ahead to 2050, is co-operation between countries key? We do not know the scale of advancement in technologies, but we do know that if we are to achieve the targets, technology—carbon capture, offshore technologies, wind power and so on—will have to play a greater role. Given the levels of investment that are needed to achieve what is needed, it seems that we cannot do that on our own. In projecting to 2050, to what extent do you consider advancement through new technology and to what extent is Scotland working with the UK Government and other Governments around the world in relation to technology?

11:00

**Roseanna Cunningham:** There is a continuing vigorous conversation about such things. I do not want to rehash the issues about carbon capture and support for renewables, but the situation within the UK is that climate change was not really being thought about when some decisions were made, and the decisions were not ours to make, in the circumstances. It is probably important, for many reasons that we have discussed, that countries move forward at something like the same pace. I would not characterise that as moving at the speed of the slowest, because a lot of countries understand very well the challenge that we all face and the potential negative impact if we do not do something about climate change.

In terms of how we will do what we do, we do not anticipate moving away from the targets, and it is particularly important that we remember that this is not just about 2050. I am afraid that I get the sense that there is a little bit of an attitude out there that says, "You know what? 2050 is 32 years away." That is not how we will do it—we will do it by setting targets all the way along. We will have to be able to answer the same questions for 2025, 2030 and 2040, because it will not all just

magically happen in 2050. Progress has to be measured: there has to be a trajectory that will take us there over the intervening period.

Sweden does not set interim targets, so there is no way for it to measure whether it is on the right trajectory. We have chosen to do things differently: we have chosen to be much stricter about measuring progress and we have set ourselves targets. I do not want everybody to think that just because we are talking about 2050 we do not also have to talk about how we get to 2050, which means that we must manage what happens in the intervening period.

An official is probably going to tell me that I am wrong about something.

**Dr Sara Grainger (Scottish Government):** Sweden does not have annual targets, but it does have some interim targets.

**Roseanna Cunningham:** This is about 2050, but—this goes back to the Committee on Climate Change advice—being able to measure how we get there and setting a trajectory to achieve that are important. That will involve discussions about the specific things that we need to do, the technologies that can be brought to bear and when it will be appropriate to bring them to bear. The Committee on Climate Change has basically said that 80 per cent emissions reduction by 2050 is reasonable: we would continue doing what we are doing, on the trajectory that we are currently on. The Committee on Climate Change thinks that 90 per cent is at the limit of feasibility, in terms of being able to measure progress. Beyond that, it cannot see a pathway or trajectory that will take us with confidence to that level.

We have to think about such things when we are setting out. It will not be enough for people inside and outside Parliament just to say that the 2050 target will take care of itself, because very soon after the legislation is passed we will have to come up with a climate change plan showing how we will get there.

**Mark Ruskell:** It has been put to us that the UK Committee on Climate Change has been quite conservative about the potential for technological change. I hear what you say about having a clear pathway and annual targets, but if we look back to 25 years ago when the internet was becoming a thing, I do not think that any of us would have predicted the huge societal change that has resulted.

You said something interesting in relation to environmental principles in the previous agenda item: you said that we legislate for actualities, not aspiration. Clearly, there will have to be a good degree of aspiration in respect of where we are going. We cannot map out the pathway now, and will probably not be able to do so in the next five

years. How do we deal with that aspiration for technological change within the scope of the targets? There is a feeling that the advice does not reflect the technological changes that could take place.

**Roseanna Cunningham:** The phrase that you used about us not being able to map out the pathway for the next five years is interesting.

**Mark Ruskell:** We will not be able to map out the pathway to 2050.

**Roseanna Cunningham:** Yes—but I am willing to bet that that is precisely what you will ask for in the first climate change plan after the bill is passed. The climate change plan will be assessed based on how accurately it maps towards 2050. My point is that we can only do that if we have some understanding of the trajectory. We have looked very closely at how to square that circle, which is, in a sense, what you are looking for. People can make a decision about the bill when the bill is introduced. Such things will not be simple and straightforward, and the first climate change plan cannot be, in effect, the written equivalent of shrugging our shoulders and saying, “Oh, well—it’ll be all right on the night”, because we cannot know that.

There have been astonishing technological changes in the last 25 years, but they have not necessarily been where we thought they would be. One of the challenges is that we do not know where things will come from and what the impacts will be. It is therefore challenging to work out how to proceed. It is challenging with an 80 per cent target, never mind anything beyond 80 per cent. These things do not go away: they will be exacerbated if we try to set ourselves targets for which we cannot show a reasonably objectively assessed trajectory. That is what I am concerned about.

**Claudia Beamish:** I will explore that a bit further. The Climate Change (Scotland) Act 2009 did not, of course, have a pathway to 2050, but in my view—and in that of a number of others—there was vagueness about the target of a 42 per cent reduction by 2020, and there was not a clear trajectory for that. Correct me if I am wrong, but that is what I have understood. If we are going to be as aspirational, but also as realistic, as possible, surely the interim targets should be even bolder up to 2050.

**Roseanna Cunningham:** I have no problem with that, if that is where people want to go, but they have to be honest about what that will mean in practice. That conversation will need to be had throughout the passage of the climate change bill. It cannot just be said that it will be a good thing to do: the conversation must be honest not just in terms of the timescales, but in terms of what

targets will actually mean and when. I am not sure that that conversation is being had at the moment, but it is one that needs to be had so that members understand what will happen when they pass legislation. There will be no purpose to members being outraged in five or 10 years about something happening that was pretty obviously going to happen because of a decision that they made previously. [*Interruption.*] The discussion will have to be had in quite blunt terms so that everybody understands precisely what it means.

**The Convener:** I will bring in John Scott. I remind people to make sure that their mobile phones and other devices are turned off.

**John Scott:** I very much welcome the cabinet secretary's ambition, but I also welcome her caution and her pragmatism that the two must go hand in hand. That is absolutely vital. Of course we applaud ambition, but we also have to be pragmatic about the realities. In that regard, if Scotland adopts a more ambitious target, which sectors will be required to reduce their emissions further?

**Roseanna Cunningham:** It is arguable that all sectors will be required to do that. There has been considerable discussion about unevenness among sectors. We have clearly made enormous strides in the energy sector. Progress has, however, not been quite so spectacular in other sectors. Most people would flag up transport and agriculture.

Significantly increased ambition will mean significantly increased expectations across all sectors, including those that it is felt have not been achieving as much as they should until now. Quite blunt discussions need to be had. There will be an interesting conversation with a variety of stakeholders about what they understand the calls on them to mean.

**The Convener:** Will the livestock sector and agriculture, for example, face very significant changes as the targets become more ambitious?

**Roseanna Cunningham:** I think that the more ambitious the targets are, the more challenging it will be to persuade people about dietary change, for example. Dietary change is pretty directly connected to the livestock sector and is, therefore, very significant. I do not think that people are necessarily drawing the lines between those dots. Folk have to be a little bit more honest about such things.

**John Scott:** Thank you very much. What influence does the Scottish Government have over policies and actions in these areas? How do you intend to use that influence?

**Roseanna Cunningham:** I am sorry—in which areas do you mean?

**John Scott:** I mean in relation to the targets, essentially. I suppose that you have answered the question by saying that you will have discussions with stakeholders and those who are in charge of delivering the targets.

**Roseanna Cunningham:** Yes. This cannot just be down to the Government. Government can set parameters, it can legislate in certain areas and it can use a variety of governmental mechanisms, but it is not just about the Government. It is about all public organisations. There are a lot of stakeholder groups in the public space that are discussing the matter, so conversations will have to be had with them. If an organisation calls for X, it is incumbent on it to ensure that its membership understands what X means, and that its members are part and parcel of where it says it wants to be. This is a democracy, so we still have to operate within that setup. We can only go so far, as the Government: we cannot do it all on our own. That is why we need to have the wider conversation, which must be an honest conversation.

**John Scott:** Do you accept that one of the roles of Government in that regard is to illustrate to industries—you mentioned transport and agriculture—the route map for how to get there, and to disseminate knowledge on best practice?

**Roseanna Cunningham:** That is a two-way process—some of what we know and understand will come from industries informing us. A dialogue requires more than one partner, so there will be a constant dialogue. Again, there will be things that we have to be a little bit cautious about, such as negative impacts in some sectors if there is a feeling that the targets are going too far. We do not want to see people drifting out of Scotland as a result of that.

**John Scott:** That is a very good point, that was well made. Thank you very much.

**Claudia Beamish:** Climate change is already having catastrophic effects on the lives and environments of those who did least to cause it. To tackle climate change in a just way, many stakeholders and others argue that there is a need to recognise the fair share of responsibility in a global and historical context. This was put into stark reality for me when I chaired a United Nations House climate justice conference the week before last. Although today we may not feel directly responsible in Scotland for the historical inequality, we should perhaps acknowledge that, although it is in the past, it is a past that we still reap the benefits of.

To highlight one stakeholder view, Friends of the Earth Scotland has extrapolated the fair share carbon budget data to find that Scotland should reach net zero emissions by 2040, and Stop Climate Chaos has proposed a date of 2050 for

that. Could you comment on your consideration of that stakeholder engagement and tell us what conclusions you have drawn from that?

11:15

**Roseanna Cunningham:** I could make a number of comments. First, at every opportunity when it has been appropriate to do so I have made the point that Scotland was one of the cradles of the industrial revolution. The phrase that I have used is that our sticky fingers are all over climate change, because right from the get-go we were beneficiaries of it, although arguably the vast majority of the population did not benefit massively from the industrial revolution—a small number of fairly wealthy people benefited fairly massively. We have been very conscious of the climate justice side of things. I think that we were the first country in the world to identify climate justice as a specific funding stream and a specific issue that we should be pushing. We have done so at every level. We were one of the first sub-state contributors to the UN climate justice fund and I know that the UN was very grateful for that, because it was able to use Scotland as an example precisely for the reasons that you have laid out. As you are well aware, we also have a commitment to setting up a just transition commission, so we are conscious of some of the inequalities and issues that can emerge from any big change that might take place as we move to a low-carbon economy.

I am well aware of the various calls that have been put forward by different organisations, but it is incumbent on all organisations when they make such calls to be explicit about what will be required to get there. Sometimes that is the bit that is missing. The high-level call is there, but what we would be likely to have to do in practice to achieve it is not. I am very much up for us having an up-front debate about that. If the decision is that that is what people want to do, they need to understand the implications of it.

**The Convener:** I recognise those observations, but I think that WWF produced a well-thought-through document last year that looked at what the bill could do in a practical sense. It looked not necessarily at the high-level targets but at some other things in there and it argued through what would need to be done to achieve that. You may have had sight of that document. Are you thinking about things like that?

**Roseanna Cunningham:** I would need to look at that to see whether it is something that would be helpful in this current conversation. A lot of what I see tends to be at the level of saying that, for example, we should not have free workplace parking, which is a good level of the debate but does not even begin to scratch the surface of

some of the ambition that we are discussing over the period between now and 2050 or 2040.

**Mark Ruskell:** I hear what you say about being explicit about actions that need to be taken where we can predict it, but are we also being explicit about the impacts of different targets? I am thinking here about the UK Committee on Climate Change. It is using an overshoot model, which means in effect that temperatures can increase beyond 1.5°C, with the hopeful expectation that they will then slip back again to 1.5°C. That, too, has an impact in terms of extinctions and deaths in this country and around the world. When you are looking at different scenarios and targets, what temperature increase target are you pegging that to? Is there an analysis of what the impact of that is, in terms of disruption to the economy, deaths, extinctions and so on?

**Roseanna Cunningham:** We are constantly having to look at both sides. People will often ask, “What is the cost of what you are doing about climate change?” but of course there is a cost to not doing something. The cost of not doing it is not always easy to assess, but it can be expressed not just in a monetary sense but in the loss of biodiversity and the other kinds of things that we are already talking about. That is absolutely part of what the discussion should encompass.

**Mark Ruskell:** Do you think that overshooting 1.5°C is acceptable?

**Roseanna Cunningham:** I am not a climate scientist. I rely on the CCC to give the best advice that it can give us as to how we should move forward. If we were to have a detailed discussion about what the climate science behind that is, I would be moving slightly out of my comfort zone.

**Dr Grainger:** The advice from the CCC is in line with the Paris agreement and these are discussions that primarily happen at that level. The detailed climate science behind the Paris agreement is not something that we have got into in detail within the Scottish Government. That is just a bit more detail to back up the cabinet secretary.

**Mark Ruskell:** Is that something that you will be looking to get, given that the Intergovernmental Panel on Climate Change will report again in October? Clearly, increasing global temperatures and struggling to bring them back down will have an impact.

**Roseanna Cunningham:** Like everybody else, we are waiting with interest to see what the IPCC says and I expect that that will inform some of the discussions around the bill. However, from what Sara Grainger is saying, I think that the CCC is already plugged into some of that conversation and is effectively feeding back, via its advice, its assessment of what we can and cannot do now.

**Alex Rowley:** Briefly, I know that we are coming on to more technical parts of this, but I welcome your statement that we have to have a very up-front, open, and transparent discussion on the implications of setting targets and on the extent to which climate change will drive Government policy. At the weekend, the GMB said that we have not had a great advantage in Scotland in jobs from renewables; it would argue that things such as fracking will bring jobs and balance to that discussion. Would you encourage that discussion and look at how, in moving towards the targets, the Government can make sure that there are real jobs and consider how those jobs will come about and how the economy will succeed?

**Roseanna Cunningham:** To an extent, that is what the just transition commission is expected to be able to do. I would very much welcome that level of engagement across the board. I have not seen the specific statements from the GMB; I will no doubt get them from officials. However what you talked about is extremely controversial. All of this kicks off a huge debate and, yes, there are issues. The just transition commission is intended to get us into a place where we can navigate through the transition to a low-carbon economy without leaving people behind. Some of us at this table are old enough to remember when there were job titles that are now history because technology changed so rapidly that certain jobs just disappeared off the face of the earth. If you talk to somebody now about some of those job titles, they will look blankly at you. This is a tricky thing to manage because you cannot know exactly what it will be.

However, to go back to the conversation that we had about discussions with other countries on technology, that is very important, because it will give us a better understanding of where we can maximise the potential benefits. We need to think about the fact that there are potential benefits and opportunities. That should all be harnessed in such a way that we end up with jobs and better working environments. Although some jobs and some job titles may disappear, they will be replaced by others. I sometimes reflect on what it might have been like had there been a just transition commission around in about 1805 and how that might have got us into and out of the industrial revolution—that is a parallel timeline, in which it did not happen.

**Stewart Stevenson:** I want to explore more the interaction between the Government and the Committee on Climate Change and perhaps take us back to the 2009 act, which I took through Parliament. We were sitting there with CCC recommendations for a 2020 target of 34 per cent or 42 per cent and we ended up amending the bill at stage 3 to make it 42 per cent, putting the 42 per cent on the face of the bill. There was nothing

vague about that target whatsoever. I want to ask whether we are minded to continue with the principle that we adopted then, which was that we should not, as politicians, be deciding the numbers; we should rely instead on the CCC, which is looking at the totality of the scientific advice available and explaining the conclusions and recommendations that it comes to. Rather than politicians making decisions, we should primarily be looking at the CCC's recommendations, particularly in relation to interim targets.

**Roseanna Cunningham:** I cannot bind Parliament and I cannot bind other members of Parliament. I do not think there is a rule around that. However, the CCC is the source of our best advice, which channels the international understanding. Do not forget that it is the committee that advises all the Governments in the UK. I was not involved in that particular piece of legislation, but it is interesting that the committee presented us with two options then and has done the same thing again, so that is clearly how it works: it offers an option that is doable and will achieve an end but also offers a stretched option for an alternative discussion. That is what the committee has done this time in offering two options. It is interesting that nobody has been much interested in one of the options that it offered, and the debate has in effect been between one of the options and another option that the committee advised was not something that at this stage it could see a pathway to.

**Stewart Stevenson:** Yes, and of course the CCC requires unanimity of all the jurisdictions in these islands on all appointments to it so that it properly reflects the interests of all. That is just an observation.

Are we on track for the 2020 target?

**Roseanna Cunningham:** Yes.

**Stewart Stevenson:** Okay, that is fine. I want to return to the subject of percentage reductions for targets and the complicated issue of baselines. Is the Government thinking about that in terms of making sure that we can see percentages against the baseline that relates to when the target was set, rather than having a revised target and resetting the clock?

**Roseanna Cunningham:** Yes. We think that that is a more straightforward and transparent way of presenting the information. Stewart Stevenson may be in a better position than I am to recall some of the discussions that would have happened about the fact that we have a mixed system at the moment. We want to move to a system that is simpler and more straightforward, and which adopts the CCC's recommendation. All

targets will be set as percentage reductions from baseline levels.

**Stewart Stevenson:** We are still looking at two baselines—1990 and 1995—for different gases.

**Roseanna Cunningham:** Yes.

**Stewart Stevenson:** Okay. I think that I have covered my bit.

11:30

**Donald Cameron:** The cabinet secretary's opening statement somewhat pre-empted these questions. I think that reference is made in the CCC's recommendations to the greenhouse gas account. Is that the same as the five-year freeze to which you referred?

**Roseanna Cunningham:** Yes. The CCC seems to have used that phrase, whereas officials did not. However, it is essentially the same thing.

**Donald Cameron:** Obviously, that advice was directed to you as the Scottish Government. Do you know whether it will be adopted across the UK, or is it Scotland specific?

**Roseanna Cunningham:** I cannot answer that. I presume that if the CCC is advising us along those lines, it must be giving similar advice elsewhere, but that is not for me to say. I do not know, and nor do I know quite where Westminster and Cardiff are in their process. Sara Grainger may know.

**Dr Grainger:** Tom Russon is keen to speak about Cardiff.

**Dr Tom Russon (Scottish Government):** The Welsh Government is in the process of setting its interim and five-year carbon budgets, having just passed its primary legislation. The UK Government has its primary legislation and its carbon budgets out to 2032.

One relevant factor is that, of those jurisdictions, Scotland is unique in having annual targets. As we understand it, a substantial part of the reason why the CCC has recommended the freeze approach relates to the fact that having annual targets means that we are more exposed to volatility in the measurement science that underpins all this, whereas both the UK and Wales have five-year budgets as their on-the-way targets, and within those budgets there is inevitably a bit of averaging out of the volatility. The same issues apply, but Scotland is probably more exposed to those issues than either the UK or Wales.

**Donald Cameron:** Whenever measurements are changed, the charge can be made that the goalposts have been shifted. I am not saying that I share that view, not least because the CCC recommended the approach, but can you reassure

the committee that we will not see new modelling, a new system, or any diminution in our efforts as a result?

**Roseanna Cunningham:** One of the problems is that the goalposts have been changing constantly, because we have not thought about this or that, or we have not previously taken a long look at this or that. There have been years in which we missed targets because of data revisions and not because of anything that we had done or not done.

We are now trying to put things on an even keel. We have spoken quite widely with groups. We are not just clutching at a solution and applying it without considerable discussion having taken place. As members can understand, the issue is quite technical and it takes some explaining. However, I think that those people who understand what is going on here are unlikely to regard the solution as a get-out-of-jail-free card; it is not. The reality of the data changes will always be acknowledged. We will always have the reality of what the science has done, even on the annual basis. However, when it comes to the greenhouse gas statistics, we now have a way of managing them slightly better. Some of the principal issues are around the land use, land use change and forestry sector and it is notable that—as far as I can see—most countries do not count that sector at all. It could be argued that we have put in place goalposts that other countries have just dodged, because they could see that they were going to cause difficulties. We are confronting some of those difficulties.

**Stewart Stevenson:** Reference has been made to the CCC providing different advice to different jurisdictions. Of course, the CCC is responsible for its advice, but given that that advice is often provided in response to questions that the jurisdictions have set to the CCC, does it relate, at least in part, to the different questions that different jurisdictions have put?

**Roseanna Cunningham:** Indeed. We had early advice last year and then we went back with an updated request because of the land use, land use change and forestry issue, so the CCC was responding in detail to a very specific question that we had asked. We made that request because any changes to land use, land use change and forestry science obviously have significantly greater implications—by a very large margin—for Scotland than they do for the rest of the UK, because of forest cover, peatland and so on. The other UK jurisdictions might feel that they do not need to look at that very closely, but we were in no doubt that we had to do so and that is why we asked for the updated advice. The CCC was responding to a very specific request from us

about a very specific issue, which we could see was going to create a problem.

**John Scott:** The science on which the targets are based changes and improves. Can you undertake, around the edges of the bill, as it were, to provide maximum transparency about the changes in the science that lead to the changing positions, because—

**Roseanna Cunningham:** Are you asking about changes in the science?

**John Scott:** Yes. Donald Cameron referred to moving goalposts. I am not suggesting for a moment that the Government would move the goalposts to suit its own ends, but the greater the transparency, the less opportunity there is for that accusation to be made.

**Roseanna Cunningham:** That is fair enough, and we can probably write to the committee with an explanation—I say to Sara Grainger that there is no need for her to look so horrified. [*Laughter.*]

I can run through in broad terms the four main reasons for the revisions, and begin to set out what some of the issues are.

First, there are changes to international scientific guidelines. Those changes are made elsewhere and may take a while to filter through. Basically, we use methods to compile the UK inventory that are consistent with international guidance from the UN, and that guidance is periodically reviewed and updated. Therefore, we can get changes at that big, international level.

We can also get improvements to UK-level methodologies. The UK inventory is regularly peer reviewed by the UN, which then makes recommendations for improvement. Again, continuous improvement happens at that level.

There are also revisions to UK-wide data sources. Sometimes those are revisions to statistical publications—for example, fuel consumption statistics might change—which can lead to revisions to the UK inventory. Those can be minor, but they can happen.

Finally, there may be improvements to the methods used to disaggregate the UK inventory. Sometimes there are improvements in Scotland-specific data that can allow for improvements to be made to how the UK inventory is disaggregated. Again, those changes tend to be minor.

Most of the changes are really at the level of the international science, and they then filter through to us. That is not done by Scottish scientists, although Scottish scientists might be involved—we are talking about the internationally understood scientific measurement of carbon emissions from degraded peat, for example. That change in people's understanding means that they get better

at measuring and the science gets better, and that then has to come through to our science.

Perhaps we could outline some of the things that have happened over the past couple of years. For example, last year, I think, we benefited from some changes in forestry science that were down to the ability to capture a wider range of smaller forestry units, adding them into the total amount. That gave us a better measurement—and a bit of an advantage. However, some things on the waste side had a negative impact. We can give examples of some of those science changes, but we do not necessarily have control over most of this. These are UK Government decisions, and we have to play with the hand that we are dealt.

**John Scott:** Indeed, and you have to improve on it as best you can. I am saying that the greater the transparency—the more that the Government shows the Parliament and politicians its workings—the more likely it is that all parties will take a collegiate approach. Transparency can be achieved if the workings are shown and peer reviewed internationally.

**Roseanna Cunningham:** The statistics that are published will still cover all of that; if the science changes, the statistics change because the science changes. That is particularly reflected in the greenhouse gas emissions statistics rather than to do with how we set our targets. We have not really spoken about this, but if it is felt that the goalposts have been moved—not because of anything that we have done but because a group of scientists have completely changed the way they measure something—we run the risk of people saying, “What's the point of all the work that we are trying to do?” This is about a mechanism for ensuring that we do not run that risk, and there are two sides to that discussion about the need for people to understand. We do not want people walking away, thinking, “If nobody knows and if you cannot tell from one year to the next, what's the point?” We do not want that to be the response, and the bill is a way of dealing with that.

We will set out in a bit more detail the four ways in which, potentially, the data can change and revisions can come about, and we will give examples of some of the things that have happened. We will flag up the years when we missed annual targets because of science changes. Sometimes we gain and sometimes we lose, and sometimes it might net off neutrally, because we have had a benefit from one sector and a negative impact from another sector. We will lay out some examples.

I want to be absolutely clear that although we have lived with the situation up until now, with everybody knowing that of course there are things that affect the targets from year to year, we now

know that the incoming science revision is going to have an incredibly big impact on all countries where land use and land use change plays a significant part and is measured. Of course, that might only be Scotland. [*Laughter.*]

**Richard Lyle:** On revisions, the CCC recommended that the overall accounting framework should shift to one that is based on actual emissions, rather than adjusting for activity in the EU emissions trading system. It stated that a shift to using actual emissions would be more transparent than the existing framework and would encourage decarbonisation in all sectors of the economy. What is your view on actual accounting rather than net accounting, and do you accept the CCC recommendations in relation to moving to actual accounting rather than net accounting?

**Roseanna Cunningham:** Yes, we intend to measure progress with targets that are based on actual emissions by removing the current accounting adjustment to reflect the operation of the EU ETS. Apart from anything else, we have no indication of what, if anything, is going to happen with the EU ETS. That move will improve transparency. The 2009 act adjustment was quite complicated, and I think that this is a much more straightforward way of managing things. Most people will not know what the ETS is, much less what the calculation for adjustment means. However, I do not want that to imply that there is any change to the operation of international emissions trading schemes in Scotland. This is just about an accounting mechanism; it is not about our view of international trading schemes, because we are going to need something to replace the ETS. I do not know quite what that will look like, although I would argue that ideally we should try to stay in the ETS. However, if we are not going to stay in it, we will need to have something that works across boundaries. That is an example of a framework that I have been asking for—I have been asking for it for about two years and getting nowhere.

11:45

**Richard Lyle:** What are the relative risks and merits of that shift? Is it likely that overall targets will become easier to achieve, or will they be harder to achieve?

**Roseanna Cunningham:** I do not think that that will really change; it will just make what we are doing more transparent. It is not about whether it is hard or easy to achieve the targets; it is about the transparency of what we are doing. I guess that this goes back to basing measurement on Scotland's actual emissions. I think that it is a more accurate reflection of what is happening in a country and what it is doing.

**The Convener:** We talk a lot about counting emissions in a variety of sectors, very often without getting into how those are counted and how accurate the accounting is. What methodology is used in relation to industrial emissions in particular? Is it recognised internationally as best practice? How accurate is it, in broad terms, compared with other calculation methodologies that we use, and how often is it reviewed, updated and improved?

**Roseanna Cunningham:** We have talked at length about the science and how revisions come about, and that applies across the board to all sectors. That answers the last part of your question, in a sense. It is a constant process. I look to Tom Russon to answer your question about the specific way in which industrial emissions are calculated, as he will be able to answer it more coherently than I can.

**The Convener:** I suspected that you might say that.

**Dr Russon:** We would be very happy to provide a more detailed, written explanation of how the emissions from all the different sectors are measured, if that would be helpful.

In general, emissions from the industrial sector, along with those from the built environment, are probably the best understood in the wider inventory. Many of those emissions can be measured directly. For example, with a large industrial complex that has big chimneys, the emissions coming from those chimneys can be measured. Such emissions have to be reported in order to comply with the EU ETS. They are quite well known and, with very few exceptions, they tend not to be revised as a result of scientific improvements.

In contrast—and I appreciate that this is outwith the immediate scope of the question—in the land use sectors, where we rely on bottom-up modelling of complex biological processes, emissions cannot be measured directly.

I am very happy to write back with a really detailed explanation.

**The Convener:** On two sides of A4, do you think?

**Dr Russon:** I will do my best.

**Mark Ruskell:** Cabinet secretary, you have outlined some of the challenges of using annual targets as opposed to multiyear budgeting. Will you stick with annual targets?

**Roseanna Cunningham:** Yes. We do not intend to move away from annual targets. Having annual targets is challenging—I think that we are the only country that takes that approach; nevertheless, we have become accustomed to it



and I can see no reason to move away from it. I have consistently made the point internationally that we are the only country with annual targets. They are an important aspect of how we manage what we do.

However, we should not allow annual targets to become the only thing that we talk about in Scotland, because annual targets can be swayed. For example, we have just been through a winter that lasted a lot longer than anybody anticipated. You would expect that to have implications for the 2020 figures, but we will have to look back and remember that winter in 2018 went on into the first week of April, so everybody's heating was on and so on. Annual targets are subject to such impacts. Nevertheless, from our perspective, the experience of annual targets has been positive and helpful in the main, so we are not moving away from them.

**The Convener:** Members have no further questions, cabinet secretary, so I thank you very much for your time. It goes without saying that this is a subject that we will return to in considerable detail over the remainder of the year. I thank you and your officials for your time this morning.

At its next meeting on 15 May, the committee will meet in private to discuss its draft stage 1 report on the Scottish Crown Estate Bill.

11:50

*Meeting continued in private until 12:18.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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