



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Environment, Climate Change and Land Reform Committee

**Tuesday 4 December 2018**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Tuesday 4 December 2018**

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**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**

**36<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Gillian Martin (Aberdeenshire East) (SNP)

**DEPUTY CONVENER**

\*John Scott (Ayr) (Con)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)  
\*Finlay Carson (Galloway and West Dumfries) (Con)  
\*Angus MacDonald (Falkirk East) (SNP)  
\*Mark Ruskell (Mid Scotland and Fife) (Green)  
\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Katriona Carmichael (Scottish Government)  
Roseanna Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform)  
Fergus Ewing (Cabinet Secretary for the Rural Economy)  
Elsbeth MacDonald (Scottish Government)  
Mike Palmer (Scottish Government)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Environment, Climate Change and Land Reform Committee

*Tuesday 4 December 2018*

*[The Convener opened the meeting at 09:51]*

### Decision on Taking Business in Private

**The Convener (Gillian Martin):** Welcome to the Environment, Climate Change and Land Reform Committee's 36th meeting in 2018. I remind everyone to switch off mobile phones, because they might affect the broadcasting system.

The first item on the agenda is consideration of whether to take in private items 5 and 6 and of whether our review of evidence heard on European Union exit and the environment and on notifications arising from the European Union (Withdrawal) Act 2018 should be considered in private at future meetings. Do we agree to deal with those matters in private?

**Members** *indicated agreement.*

## European Union (Withdrawal) Act 2018

### Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019

09:51

**The Convener:** The second item on the agenda is evidence on the Waste (Miscellaneous Amendments) (EU Exit) Regulations 2019.

I am delighted to welcome from the Scottish Government Elspeth MacDonald, who is from the environmental quality and circular economy division, and Emily Freeman, who is from the directorate of legal services.

My first question relates to where decision-making powers in relation to the waste regulations will go in the event of a no-deal Brexit. The notification says that targets should be set by a secretary of state of the United Kingdom Government rather than by Scottish ministers. Why does the Scottish Government consider that to be acceptable?

**Elspeth MacDonald (Scottish Government):** In what particular context? There are targets throughout the area.

**The Convener:** I am talking specifically about the Waste and Emissions Trading Act 2003.

**Elspeth MacDonald:** The notification has been crafted as carefully as possible in order to give full information to Parliament. We understand that there might be a need for more information, but we hope that we have covered the matter properly.

The regulations would operate to retain the power to set UK targets. The power, as it will be amended by the regulations, is not mandatory, although the existing power would be mandatory in the event of a no-deal Brexit. The power could be exercised only with the agreement of all the devolved Administrations. The effect of that would be that the Scottish Government could participate in a future UK allowance scheme if it chose to do so, but it would not have to.

Another point arises from your question. The retention of the power, or the option to use the power, would not affect the power of Scottish ministers to set their own targets. Ministers have already set a requirement for zero biodegradable municipal waste going to landfill, which will apply from January 2021. That target was set by the Waste (Scotland) Regulations 2012, which were introduced quite a long time ago. Scotland is far ahead on waste disposal targets. Those regulations were obviously put before the

Parliament, and any future Scottish regulations in the area would also come before the Parliament.

**The Convener:** Regardless of the regulations that are before us, will the committee still be able to scrutinise the targets that are proposed for Scotland, regardless of whether they are the same as or different from those for the UK?

**Elsbeth MacDonald:** If regulations are for the UK with Scottish consent, they will come to the Scottish Parliament under section 57 of the Scotland Act 1998, so the committee will get the normal notification and will, as a result, be able to ask for evidence.

**The Convener:** Do you expect the situation to change? Is this just a temporary arrangement for a no-deal scenario?

**Elsbeth MacDonald:** This is a temporary arrangement. The regulations that are before the committee are to address a no-deal scenario; they are entirely about keeping current systems operating while that is still appropriate and about making changes so that there is, in the Government, no cessation of operability—that is the expression that we use. We need everything to continue to run as it is running now. That is what the regulations are about.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I will raise a wee technical point that picks up on what I just heard about all four Administrations being required to give consent. Who gives consent on Northern Ireland's behalf? Is the absence of consent or of non-consent taken as consent?

**Elsbeth MacDonald:** Proactive consent is required. I confess that I do not know the answer to your first question. I can say that the Northern Ireland department of agriculture, environment and rural affairs is contributing to the process, but that is as far as my knowledge goes. I imagine that the position will depend on how the devolution settlement in Northern Ireland continues.

Active consent is required. If one Administration failed to consent, no regulations would be made.

**Stewart Stevenson:** Convener, you can see why I asked my question. We might want everyone to give consent but, if Northern Ireland could not consent in the way that is framed in the regulations, that could be an issue for us. As we cannot answer the question today, I suggest that we pursue it by other means.

**The Convener:** I agree.

**John Scott (Ayr) (Con):** In those circumstances, would existing regulations apply? Would the status quo apply? Life would go on.

**Elsbeth MacDonald:** Targets are currently set under the Landfill (Maximum Landfill Amount)

Regulations 2011. All the Administrations are working towards a set of targets. That will carry on until March 2020—that is how long the scheme is set for. After that date, all the Administrations will need to consider how they will proceed. There is no guarantee that there will be a future UK scheme; equally, there is no guarantee that there will not be agreement on a future UK scheme.

**John Scott:** We can cross that bridge when we come to it.

**Stewart Stevenson:** I will move on to Commission decision 2000/532/EC, which relates to hazardous waste. We are told that the Scottish ministers will have the power to decide on the classification of hazardous waste. My simple question is this: what discussions have been had with the Scottish Environment Protection Agency? I assume that advice on classification will come from SEPA, but you might tell us that it will come from elsewhere.

**Elsbeth MacDonald:** You are correct in saying that we would expect advice on hazardous waste to come from SEPA. We regularly engage with SEPA on the full range of waste-related deficiency issues, including hazardous waste, because SEPA is in the front line.

SEPA works with the other UK environment agencies in the list of wastes decision process, and there is joint UK "Guidance on the classification and assessment of waste", which is known as WM3. Going forward, the Scottish Government would work with SEPA in deciding when further waste could or could not be—

10:00

**Stewart Stevenson:** Let me pick up on that, first. You said, "Going forward, the Scottish Government would" engage with SEPA, but has it already done so?

**Elsbeth MacDonald:** Yes. I am sorry. What I meant is that it engages with SEPA and will do so in the future.

**Stewart Stevenson:** Do you mean on this specific subject?

**Elsbeth MacDonald:** Yes.

**Stewart Stevenson:** Therefore, it is reasonable to assume that SEPA has the necessary skills and personnel in place to deal with the matter.

**Elsbeth MacDonald:** Yes.

**Stewart Stevenson:** That is fine.

**Elsbeth MacDonald:** Because I knew that I was coming to the committee, I spoke to my contact in SEPA just to be double clear that I could come and say these things to the committee. The

answer to your question is yes—SEPA has a long history of involvement in the matter.

**John Scott:** On the Control of Pollution (Amendment) Act 1989, to give you a reference point, I note that section 2 of the notification states that

“carriers from EU member states will no longer be exempt from registration.”

I presume that that means that, because the EU system will no longer apply in the UK, EU carriers will have to register in order to adhere to the UK system. That might not in itself be a policy decision and therefore not necessarily a deliberate policy change, but it will have the effect of such a change. Can the Scottish Government confirm that EU carriers will have to register to adhere to the UK system?

**Elsbeth MacDonald:** Yes—although perhaps I should roll back from that a little and say, by way of preface, that this has been an iterative process with the Department for Environment, Food and Rural Affairs over time. When I prepared and lodged this notification, I used the phrase “will no longer” in the sentence that you have referred to, but, in digging further over time for our own Scottish regs, we have discovered that the power to make such an exemption had, in fact, never been used and that EU carriers actually have to register with SEPA at the moment.

I apologise for that—the sentence was not meant to mislead the committee. Under the change that is being made, those carriers will no longer be exempt from registration, but the fact is that that power has not been exercised. As a result, EU carriers already have to register with SEPA or the other environment agencies in the UK, and that will continue, meaning that it will be business as usual. Not only is it not a policy change; it is not an operational change, either.

**John Scott:** That is great. Thank you.

Could this have any border implications, especially in the event of a no-deal scenario? Possibly not, from what you are saying.

**Elsbeth MacDonald:** This is for the operation of carriers within the UK. Currently, carriers would be able to operate outwith the UK, too, and that position is subject to on-going work with colleagues in the UK Government, other devolved Administrations and environment agencies in relation to a reserved set of regulations covering the transfrontier shipment of waste, which even the European Commission has identified as an issue that needs to be resolved and on which it recently came out with a very helpful notification.

**Stewart Stevenson:** I seem to be hearing that the registration of a carrier with the Environment Agency south of the border will apply to the whole

of the UK. If the carrier registered with the environment bodies in any of the four jurisdictions, would that registration cover the whole of the UK?

**Elsbeth MacDonald:** There is mutual recognition of registrations across the UK, because the bodies work to the same standards.

**Mark Ruskell (Mid Scotland and Fife) (Green):** A number of the EU instruments have not yet been transposed, and we are clearly running out of time. Do you anticipate any of those instruments not being transposed in time for withdrawal? If so, what will the Scottish Government do?

**Elsbeth MacDonald:** I will take that question in bits, if I may.

The EU regulations and decisions covered in this notification are already directly applicable, and under the European Union (Withdrawal) Act 2018 those regulations and decisions will become part of domestic law. The regulations that we are discussing amend them to ensure that they work properly in our domestic law in the UK, including in Scotland, which means that no further work needs to be done to make sure that they work in that respect.

As for directives, we are working things through to ensure that anything that is not transposed is dealt with in our own Scottish deficiencies instruments. That work is reasonably well advanced, and we expect to complete it before exit day.

**Mark Ruskell:** You say that you expect to do that, but can you guarantee that things will be in place? If they are not in place, what work will you have to do beyond exit day?

**Elsbeth MacDonald:** With regard to a no-deal scenario, what we are identifying just now are the deficiencies instruments that will need to be in place before exit day to ensure operability after it. I say that we “expect to” complete that work because no one can totally guarantee everything in real life. However, it is our very real ambition and hope that we will complete—as we expect to—all that work for exit day, if it happens.

Any further changes that might be desirable flowing from EU directives or law would be possible if we had a withdrawal agreement, because that agreement would be available for change under the withdrawal act. However, we are not working towards that scenario at this time. We must make all the changes that we need to make before exit day.

**Mark Ruskell:** Let us move to another issue. Do you feel that there are gaps in the regulations and guidance with regard to the incineration of waste? I know that that area is not explicitly covered in this SI.

**Elsbeth MacDonald:** I apologise, but I am not able to answer that question. It is not something that I have dealt with per se in the notification process.

**Mark Ruskell:** Let me focus my question a bit more. If the SI is approved, will it give the Scottish Government scope to set targets—say, a cap—on incineration? Implicit in the SI are targets for recycling, landfill waste and everything else. Would the SI allow a cap on incineration?

**Elsbeth MacDonald:** It would not change any existing law. I am sorry, but I just do not have specific knowledge of the area to which you are referring.

**Mark Ruskell:** Could you write back to the committee on that?

**The Convener:** We can follow the matter up in a letter.

**Mark Ruskell:** It is something that we should get more detail on.

**Elsbeth MacDonald:** I would love to be able to tell you that what you are saying is correct, because I think that it is. However, I do not know—I will need to check it for you.

**Mark Ruskell:** That will be fine.

**The Convener:** We are happy for you to get back to us on that.

**John Scott:** With regard to the framework discussions, the notification says that there will be “administrative changes” and states:

“We have been engaged in framework discussions with all the administrations of the UK and the relevant regulators specifically looking at the waste regulation in the UK outside of the EU and its existing regime.”

Can the Scottish Government provide more detail on who is involved in the framework discussions and, given how wide ranging the field of waste legislation is, what precisely those discussions are about? What role is SEPA playing in that respect?

**Elsbeth MacDonald:** The focus to date has been on addressing deficiencies in legislation and, in doing so, we have identified that there might be value in having a common framework to support areas where co-ordination and co-operation might be of benefit. What come to mind are the producer responsibility provisions for end-of-life vehicles and so on, which are currently dealt with on a UK basis, but there are other areas.

The discussions are at a very early stage. We are slightly driven by the fact that DEFRA is concentrating on the SIs, and we think that this is a logical development of that, but we are at a very early stage and are going to continue with that work as soon as we can. As for SEPA’s involvement, given that its remit with regard to

waste management is so wide ranging, we would, of course, involve it in these considerations. There is no doubt about that.

**John Scott:** What will SEPA’s specific role be? Is that role to be defined?

**Elsbeth MacDonald:** It will be its normal advisory and information-giving role. It also has powers to provide advice on technological changes, for example. We will look to SEPA to provide a full range of supporting information and advice on the frameworks. Apart from anything else, it quite often operates in a framework in the UK, in effect, even though that has not been formalised.

**John Scott:** Is SEPA adequately resourced to do all that? One has to ask that, given the declining budgets.

**Elsbeth MacDonald:** Yes, I think so.

**John Scott:** As far as you are aware.

**Elsbeth MacDonald:** As far as I am aware, SEPA is adequately resourced. However, that is a question for SEPA; it is not for me to advise on that.

**John Scott:** That is fair enough.

**Finlay Carson (Galloway and West Dumfries) (Con):** The notification says that a number of European Union regulations and decisions are to be revoked, but it does not identify them. Can you identify the regulations and decisions that are to be revoked?

**Elsbeth MacDonald:** Certainly. If the committee wants that kind of information to be included in the next notification, I will be more than happy to include it. There is a list of 20 decisions and regulations that is as dry as dust, to be honest. I could read the list to members, but I would be more than happy to send it to the clerk.

**The Convener:** For efficiency, sending the list would probably be a better idea. Is Finlay Carson happy with that answer?

**Finlay Carson:** I am totally happy with it.

**Elsbeth MacDonald:** In short form, it is to do with the revocation of instruments that we have transposed into domestic legislation and are spent or are reporting or other requirements that involve doing things to or for the European Commission—that has probably come out wrongly. That genre of instruments is covered. I will send that information to the clerk when we get back to the office.

**Angus MacDonald (Falkirk East) (SNP):** I have a general point about the layout of the notification. After the “EU Regulations” and “EU Decisions” headings, there is a general paragraph that states that a number of EU regulations or



decisions will be amended. The paragraph goes on to detail several specific regulations or decisions. Can you confirm that every regulation and decision that the statutory instrument concerns, other than the revocations, is specified in the notification?

**Elsbeth MacDonald:** Yes. The general paragraph was an attempt to explain the general process and the aims to be achieved by the regulations. We have gone into each and every regulation that is dealt with.

**Angus MacDonald:** Okay. Thank you.

**Claudia Beamish (South Scotland) (Lab):** To be honest, I am somewhat out of my depth with this question, but I will ask it anyway. The notification mentions that another notification in the subject area is “anticipated in December 2018”, which is where we now are. Will you clarify for us why the Scottish Government has separated consideration of the notifications? Is it appropriate to consider the two notifications in isolation?

**Elsbeth MacDonald:** The notification is about regulations that are subject to the affirmative procedure in Westminster; therefore, we have to satisfy its parliamentary requirements and the protocol. We have had to take forward the notification much earlier than the notification for the second set of regulations, which are subject to the negative procedure. There is a parliamentary procedure point coupled with protocol requirements, and the process is driven by timetables in DEFRA, as well. There is a technical reason. There is no intention to split up the notifications for any other reason.

**Claudia Beamish:** That is very helpful.

**The Convener:** A tremendous amount of work is being done in preparation for there being no deal. I presume that, in the event of a deal, we will need to look at all these matters all over again from a different perspective. Is that the case?

**Elsbeth MacDonald:** I presume that, if there is no deal, we will need to go back and consider what aspects—if any—of the work will be relevant to what will need to be done. The work might be quite helpful, or it might not be: we do not know. If there is no deal, the work could range from being useful to being completely nugatory.

**The Convener:** We do not have any more questions. Thank you very much for coming in to help us with our deliberations.

10:15

*Meeting suspended.*

10:20

*On resuming—*

### **Persistent Organic Pollutants (EU Exit) Regulations 2018**

**The Convener:** Under agenda item 3, we will consider a number of requests from the Scottish Government for the committee to consent to the United Kingdom Government legislating, using the powers under the European Union (Withdrawal) Act 2018, in relation to a number of UK statutory instruments.

The first of those is the Persistent Organic Pollutants (EU Exit) Regulations 2018. Members will note that the deadline for consent from the Scottish Parliament is 5 December. If there are no comments on the regulations, are members content to give our consent for UK ministers to lay the regulations in the UK Parliament?

**Members indicated agreement.**

### **Control of Mercury (EU Exit) Regulations 2018**

**The Convener:** The second instrument is the Control of Mercury (EU Exit) Regulations 2018. Members will note that the deadline for consent from the Scottish Parliament is 5 December. If there are no comments, are we content for the Scottish Government to give its consent to UK ministers to lay the regulations?

**Members indicated agreement.**

### **Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018**

**The Convener:** The third instrument is the Equine (Records, Identification and Movement) (Amendment) (EU Exit) Regulations 2018. Members will note that the deadline for consent from the Scottish Parliament is 5 December. If there are no comments, are we content with the statutory instrument?

**Members indicated agreement.**

### **Animal Welfare (Amendment) (EU Exit) Regulations 2018**

**The Convener:** The fourth instrument is the Animal Welfare (Amendment) (EU Exit) Regulations 2018. Members will note that the deadline for consent from the Scottish Parliament is 5 December. I believe that John Scott wants to comment on this instrument.

**John Scott:** I would like clarification from whomsoever is appropriate that the UK has decided to continue to recognise transport authorisations from EU countries to the UK and on whether the agreement is reciprocal.

**The Convener:** We can certainly make that point and ask for clarification when we send our letter of consent.

**John Scott:** It relates to the transport section of the Animal Welfare (Amendment) (EU Exit) Regulations 2018.

**Mark Ruskell:** I would like further clarification in relation to the decision-making powers, on whether the practice of live animal export should be banned and whether there is any bearing on the mix of devolved and reserved responsibilities. Where does the Scottish Government see its powers lying in relation to the regulations?

**The Convener:** We can seek clarification on those two points. Beyond that, are we content to give our consent to the statutory instrument?

*Members indicated agreement.*

#### **Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018**

**The Convener:** The fifth instrument is the Fluorinated Greenhouse Gases and Ozone-Depleting Substances (EU Exit) (Miscellaneous Amendments) Regulations 2018. Members will note that the deadline for consent from the Scottish Parliament is 6 December. Are there any comments on the instrument?

**Mark Ruskell:** I noted that the regulations could allow the Scottish Government to go faster on phasing out ozone-depleting substances. It would be useful to get clarity from the Scottish Government on whether it sees itself continuing to reduce ozone-depleting substances in line with other parts of the UK, or sees any benefit in accelerating the phase-out in Scotland.

**The Convener:** Is that in relation to this statutory instrument, or is it a more general question about the Scottish Government's options in this regard?

**Mark Ruskell:** It would be useful as context for how the regulations will be used in a withdrawal scenario.

**The Convener:** Okay, we can reflect that in our letter. That said, do we consent to UK ministers laying the instrument?

*Members indicated agreement.*

#### **Nagoya Protocol (Compliance) (UK) (EU Exit) Regulations 2018**

**The Convener:** The sixth instrument is the Nagoya Protocol (Compliance) (UK) (EU Exit) Regulations 2018. Members will note that the deadline for consent from the Scottish Parliament is 10 December. As there are no comments on the instrument, are we content for the Scottish Government to give its consent for UK ministers to lay the regulations in the UK Parliament?

*Members indicated agreement.*

#### **Air Quality (Amendment etc) (EU Exit) (No 1) Regulations 2018**

**The Convener:** The seventh instrument is the Air Quality (Amendment etc) (EU Exit) (No 1) Regulations 2018. Members will note that the deadline for consent in the Scottish Parliament is 10 December. If there are no comments on the regulations, are members content for the Scottish Government to give its consent to UK ministers to lay the regulations in the UK Parliament?

*Members indicated agreement.*

#### **Air Quality (Amendment) (EU Exit) (No 2) Regulations 2018**

**The Convener:** The eighth instrument is the Air Quality (Amendment) (EU Exit) (No 2) Regulations 2018. Members will note that the deadline for consent in the Scottish Parliament is 10 December. If there are no comments on the regulations, are members content for the Scottish Government to give its consent to UK ministers to lay the regulations in the UK Parliament?

*Members indicated agreement.*

#### **Marine Environment (Amendment) (EU Exit) Regulations 2018**

**The Convener:** The ninth instrument is the Marine Environment (Amendment) (EU Exit) Regulations 2018. Members will note that the deadline for consent in the Scottish Parliament is 11 December. If there are no comments on the regulations, are members content for the Scottish Government to give its consent to UK ministers to lay the regulations in the UK Parliament?

*Members indicated agreement.*

#### **Agriculture (Zootechnics) (UK) (EU Exit) (Miscellaneous Amendments) Regulations 2019**

**The Convener:** The tenth instrument is the Agriculture (Zootechnics) (UK) (EU Exit) (Miscellaneous Amendments) Regulations 2019. Members will note that the deadline for consent in

the Scottish Parliament is 12 December. Members should be aware that the notification was also sent to the Rural Economy and Connectivity Committee, as the proposed instrument relates to both committees' remits. Each committee has been asked to consent only to the elements of the notification relevant to its remit. Members should note that no legal or policy issues were raised in relation to this proposed instrument, in so far as it relates to this committee's remit.

If there are no comments on the regulations, are members content for the Scottish Government to give its consent to UK ministers to lay the regulations in the UK Parliament?

**Members indicated agreement.**

### **Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019**

**The Convener:** Our final instrument is the Farriers (Registration) and Animal Health (Amendment) (EU Exit) Regulations 2019. Members will note that the deadline for consent in the Scottish Parliament is 12 December. Members should be aware that the notification was also sent to the Rural Economy and Connectivity Committee, as the proposed instrument relates to both committees' remits. Each committee has been asked to consent only to the elements of the notification relevant to its remit. Members should note that no legal or policy issues were raised in relation to this proposed instrument, in so far as it relates to this committee's remit.

If there are no comments on the regulations, are members content for the Scottish Government to give its consent to UK ministers to lay the regulations in the UK Parliament?

**Members indicated agreement.**

**The Convener:** I confirm that the committee will write to the Scottish Government in relation to all the instruments today and include the points that have been raised.

10:27

*Meeting suspended.*

10:31

*On resuming—*

## **EU Exit and the Environment**

**The Convener:** The fourth item on our agenda is evidence from the Scottish Government on EU exit and the environment. I am delighted to welcome Roseanna Cunningham, Cabinet Secretary for Environment, Climate Change and Land Reform, and Fergus Ewing, Cabinet Secretary for the Rural Economy. They are joined by their officials, Katriona Carmichael, deputy director for environment and land use strategy; David Barnes, national adviser for agriculture; and Mike Palmer, deputy director of Marine Scotland. I understand that both cabinet secretaries have an opening statement to make and I ask Roseanna Cunningham to go first.

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** Thank you, convener. I will be brief.

Fergus Ewing and I are concerned about the likely negative impacts that Brexit will have for our portfolios. I want to make three points about the expected impact across my portfolio and briefly flag up to the committee how we are responding.

First, it is clear that the proposed deal is pretty bad for Scotland and the UK. It would severely damage our economy, including our exporting sectors such as food, fishing and aquaculture. The political declaration, in particular, fails to provide strong guarantees on the protection of environmental standards, leaving those vital issues for another day.

Secondly, over the course of this evidence session, I want to explain to the committee the scale, breadth and complexity of the work that is under way—despite the uncertainty—across each of the Scottish Government directorates and public bodies that support my portfolio. That includes work on not just the extensive secondary legislation programme but on the broader programme of operational readiness planning, on engagement with the UK Government, beyond the transition period, on UK frameworks—where those are in Scotland's interests—and on the implications of EU exit-related primary legislation that is being brought forward by the UK Government.

In the light of that, I am continually reviewing my portfolio priorities and, in some cases—including in relation to development of a new environment strategy—I have taken the decision to slow our progress until such time as the main hurdle of the no-deal preparations has been crossed.

Thirdly, we are still waiting for further clarity from the UK Government on a lot of important areas, so we do not yet know what the full extent of the impact will be. That includes how EU funding will be replaced after exit—an issue that goes across both portfolios—and how environmental protections will be guaranteed in the future UK-EU relationship that follows on from the referendum vote. I have made clear the Scottish Government's ambitions to maintain equivalence with high EU standards and to continue to have those tracked.

For that reason, I have decided to hold back for a brief period publication of the consultation on environmental governance, so that we can set out a more meaningful set of options for consultees to consider once the future picture is more clear. My officials will continue to develop the consultation proposals and engage with the UK Government and other devolved Administrations on their respective plans for future environmental principles and governance. That is a live discussion.

I hope that that statement sets out for the committee the extent of the work and a current sitrep with regard to environmental governance and principles.

**The Cabinet Secretary for the Rural Economy (Fergus Ewing):** Good morning, everyone. Scotland voted overwhelmingly to remain in the EU. During the referendum, leave campaigners, including UK Government ministers, promised that there would be no loss of funding, so the UK Government must now deliver on that promise. If those ministers renege on their promise, the potential consequences for rural Scotland are serious.

Despite that, we are working responsibly on preparations for Brexit and are doing so in a detailed and thorough manner. For example, we are working with DEFRA on preparing statutory instruments to ensure that we have a functioning basis on which to operate on exit day. That will ensure continuity from next March of farm payments and the European maritime and fisheries fund, as well as fisheries management arrangements. We are engaging with DEFRA on the UK Agriculture Bill and Fisheries Bill.

On the Agriculture Bill, we asked Mr Gove to make amendments that would bring the bill in line with devolution where it wrongly takes powers from this Parliament, and we asked him to deliver on the promises that were made during the referendum campaign, including the promise to replace all lost EU funding. So far, the UK Government has rejected our amendments. As a second best, I asked Mr Gove to make a commitment on the record, in *Hansard*, in the House of Commons about future funding. To date, he has not agreed to either point. I still hope that

we can find an agreed solution on those issues. We will keep pressing the UK Government on them.

The UK Fisheries Bill is at an earlier stage. We had sight of it only extremely late in the day, which has meant that we have had little time to work with DEFRA to improve it, but that is what we have done. We have managed to make improvements, but I remain concerned about a number of omissions, in particular in relation to the allocation of fishing opportunities, funding for our coastal communities and the sea fish levy, on which I will write to Mr Gove this week seeking amendments.

I want to raise our concerns about the impact on Scottish fisheries and aquaculture of the UK Government's withdrawal agreement and political declaration. Despite the Prime Minister's claims, a link between trade and access to waters has been conceded, allowing for the exclusion of fisheries and aquaculture from tariff-free access through a temporary customs union under the so-called backstop if a fisheries agreement that is acceptable to the UK cannot be achieved. To compound that, aquaculture has now been bound into the deal alongside fisheries, which sets one vital Scottish sector against another, showing a complete disregard for those key Scottish interests. We feel that that is a disturbing development, and one that occurred without any form of meaningful engagement with the Scottish Government.

I will again write to Mr Gove this week to outline those concerns.

**The Convener:** Having listened to both statements, I am struck by the extent to which the Scottish Government is having to cope with a hugely onerous amount of work to prepare for a no-deal departure, which comes on top of its normal work—that is my impression, but can you say what is happening in Government? Are you getting any extra resources or civil servants to help you to cope with the workload, or is it just a case of people having to put in a tremendous amount of work to prepare for the event of a no deal so that Scotland still works?

**Roseanna Cunningham:** My answer to all that is yes. We have some extra resources, but, proportionately, we do not have the same extra resources as, for example, DEFRA has. That creates a bit of an issue.

Secondly, at the moment, an enormous proportion of the work that is going on is in preparation for a no deal. That work has to be done, because it is on the identifiable issues that, if there is no deal, will be a real concern literally the very next day after Brexit. The work all has to be done in preparation for a no deal, notwithstanding that if there is a deal, all that work

will have been, in hindsight, for nothing. However, at this stage in the proceedings, we have to do it.

All of that work is being done by the same people who are doing the more proactive work on how we will work in the longer term—the same officials are having discussions with DEFRA officials about potential frameworks and all the rest of it. They do the work right across the board; there is not a discrete team doing SIs and a completely separate team doing frameworks. To think that would be to misunderstand how it all works. We have a really good, hard-working team of officials across both portfolios who are working on all this.

There is no doubt that it is having an impact. Thus far, we have managed it with careful and astute management but, in some cases, there might be an effect. An example is our decision to slow down on the consultation, although that is not so much about workload; it is more because we have a set of question marks and we need clarity. In other areas, it will be about trying to manage the workload to ensure that things are done on time when that is necessary, which might mean that other things have to slide by a month or two. Officials make decisions on that all the time, and some of those decisions end up being ones that Fergus Ewing and I make at ministerial level. At the moment, none of them is a huge decision; they are working decisions.

That is where we are at the moment. One real issue is that all of this is now an enormous part of our day job, and a part that nobody could have envisaged two and a half years ago. Therefore, of necessity, it creates a problem.

**John Scott:** I declare an interest as a farmer. Perhaps unsurprisingly, I have been asked to ask the questions on agriculture. Unlike the Welsh Government and the Northern Ireland Department of Agriculture, Environment and Rural Affairs, the Scottish Government has not accepted the UK Government's offer to include a Scottish schedule in the UK Agriculture Bill, which means that its provisions do not extend to Scotland. However, the UK Government states that the offer is still on the table. Is the adding of a Scottish schedule to the UK Agriculture Bill still under consideration by the Scottish Government? If so, that is good; if not, why not?

**Fergus Ewing:** It is still an option, as the secretary of state has said. It would require the consent of the Scottish Parliament. We have expressed serious concerns with the bill because we understand that, in at least three respects, it predates on the powers of the Parliament. In shorthand, those relate to compliance with the World Trade Organization agreement, producer organisations and fair dealings in agricultural supply chains. We have set out the reasoning

behind our assertion that the powers would be taken away from the Parliament and we have asked DEFRA to explain its reasoning for taking the opposite view, but my understanding is that it has declined to do so, or at least it has not done so. That would not be acceptable in a court of law. You cannot just make assertions and not back them up. We back up our arguments, but DEFRA has not backed up its.

Despite that, we continue to seek to resolve the issues and to work at official level with the UK Government. We have workmanlike relations with the ministers Mr Gove and Mr Eustice and others. However, as matters stand and as members will know from the legislative consent memorandum that we have lodged with the Scottish Parliament in accordance with the rules, it is not acceptable for the bill to predate on the powers of the Parliament, particularly since agriculture has been devolved for about 20 years.

To put it in shorthand for the farmer in the field, there is absolutely no problem and no practical difficulty with our continuing to make payments. There are some legal complexities, but I assure farmers and crofters who are listening to this that that is not an issue. The presence or absence of a schedule in the Agriculture Bill does not make any difference in substance to our capacity to deliver a sustainable future for farmers and crofters.

However, the important issue is about funding. Promises were made before elections and referenda, but the UK Government has signally failed to even repeat its promise, never mind confirm that it will be implemented. To me, that is an extremely important point, and I hope that the committee will agree.

10:45

**John Scott:** If the matter of predation, as you put it—I am not sure whether that is a legal term—could be resolved, would you still consider having a Scottish schedule in the UK Agriculture Bill?

**Fergus Ewing:** We want to be as co-operative as possible and, if we can make progress, that would certainly be welcome. As well as face-to-face meetings, I have discussed the issue over the telephone with Mr Gove. I have to say that he is one of the most courteous people I have ever encountered but, on judgment day, we are judged by our deeds and not by our words, no matter how courteously uttered they may be, and we are waiting for delivery of the promise.

There is also a bigger question about the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill and the Sewel convention. It is Mr Russell's belief, and our belief, that this Parliament has not been respected. That is a wider issue that really needs to be resolved so

that progress can be made. I imagine that Mr Russell is better placed to explain the detail of that, but we feel that the Parliament has not been respected in relation to the continuity bill or in the Agriculture Bill or the Fisheries Bill, about which we have generally been consulted more or less at the stroke of midnight. That has resulted in situations that I would prefer to have avoided. I do not want to have discussions about technicalities; I want to get to the meat of the thing and sort out matters for farmers and crofters and people who work in the rural countryside, including gamekeepers, to whom the term “predation” is probably more applicable than it is to the law courts.

**John Scott:** Merely as a point of information, can you tell us when the Supreme Court is likely to rule on the continuity bill?

**Fergus Ewing:** That is above my pay grade.

**John Scott:** I see. I take it that you do not know. I just wondered whether you perhaps knew.

**Fergus Ewing:** I am not trying to be facetious—

**Roseanna Cunningham:** I do not think that anybody knows.

**Fergus Ewing:** I do not think that the Supreme Court tips you off about what it is doing.

**John Scott:** Will it be necessary to introduce a Scottish agriculture bill and, if so, when will that happen?

**Fergus Ewing:** We will do everything necessary to ensure that the day-to-day management of matters continues. As I think Mr Scott knows, I spend a lot of time on common agricultural policy information technology issues. I had a conference call on that this morning, and I deal with it every week or, quite frankly, every day. I am focused on the day job. As my colleague said, that work has been supplemented by Brexit but, as my old boss used to say, if you want something done, ask a busy person, so I guess that we just have to get on with it and not whinge too much.

If we need an agriculture bill, we will have one, although of course it will be up to the Cabinet to decide on that and the Parliament to consider it. We have considered the issue in detail. There are only limited circumstances in which a bill would be required, but it would not be a complex matter. It would be routine legislation, with which we are well familiar in this Parliament, and it could be dealt with reasonably swiftly. Moreover, the deadline within which such a bill would need to be submitted would not give us any problem at all. No legislation is needed for 2019. For 2020, a small technical issue may need to be dealt with. From 2021 onwards, we may need a bill for the approach in our consultation document “Stability

and Simplicity—proposals for a rural funding transition period”.

**The Convener:** Mark Ruskell has a supplementary question.

**Mark Ruskell:** Mr Ewing seems to be saying that there is a legal basis for direct support post-2020, but that differs from the position of NFU Scotland, which is still concerned about the issue.

**Fergus Ewing:** We have had detailed engagement with the NFUS, including a meeting with its president, Andrew McCornick, with whom I have a very good working relationship. I am not sure that it is correct to characterise us as having different views. Andrew McCornick was reassured by the assurances with which I provided him at the meeting when we discussed those matters in detail.

There is a sound legal basis for making payments. The particular basis will depend on the particular outcome of Brexit. I am not going to begin to speculate, but there are three broad scenarios. In each case, there is a clear legislative basis for continuing the payments. I can confirm all the technicalities in a letter. I could set them out now, but it would take me about five minutes. Rather than do that—unless members want to spend the time on that, which is entirely up to them—please take it from me that there is no doubt about continuing the payments.

The sole issue—which, to be fair to Mr Ruskell, was subject to some debate initially—was whether post-Brexit changes that we might wish to make to the CAP, for example, would require legislation in order to give them effect. We think that that might be the case, but we will have plenty of time to bring in such legislation if it is required. I guarantee that we will certainly do anything that we need to do to ensure that we are in a position to make changes. If that included the requirement for legislation, I would have to follow the necessary procedures and pursue that through Cabinet, because it would be a Cabinet decision. The Scottish Government is determined to do everything that we need to do because, despite all the argy-bargy about Brexit, which is absolutely serious, we nonetheless have responsibility to ensure that, whatever happens, we are in a position to do our day job. I assure the committee that we take that responsibility with the utmost seriousness.

**Mark Ruskell:** The opportunity to design and consult on further changes is running away. If you want to put in place the new subsidy system by 2020, there is a limited amount of time to consult stakeholders.

**Fergus Ewing:** No, there is not; there is plenty of time. The consultation on changes is a different matter. We almost always have consultation.

Routinely, consultation periods could be six, nine or 12 weeks, or thereabouts. However, I can assure members that there is no time issue. The matter has also been raised in the REC Committee and in the House of Commons Scottish Affairs Select Committee, which Mr Wishart chairs. Mr Barnes could give a very detailed technical explanation if members wish; I am in your hands, convener.

**The Convener:** John Scott has a final question on the matter, and then we will move on.

**John Scott:** I am interested in what the shape and thrust of the Scottish agriculture bill might be, at the time at which you deem it appropriate to introduce it.

**Fergus Ewing:** We are assuming that a bill will be necessary for the purpose of making adjustments post-Brexit to the current CAP. If that is the bill that we are talking about—that is certainly what I am taking from this question session—it would have a very narrow remit. It would be focused on the issue of powers; it would not really discuss the substance. It would enable changes to be made to the process of the payments rather than set out in detail the substance of the policy. “Stability and Simplicity”, which we consulted on over the summer, sets out various suggestions that the Scottish Government feels might be worthy of serious consideration—namely, changing some aspects of the CAP and piloting some changes. We set out a timescale for that in the document. We would be able to bring in the necessary legislation to enable those, or other, changes to be made in ample time so that they could be implemented post-Brexit.

**Stewart Stevenson:** I want to talk about the Fisheries Bill, which the UK Government has introduced. In your introductory remarks, you highlighted three things: fishing opportunities, funding for coastal communities and sea fish.

Let me start with fishing opportunities. The UK Fisheries Bill basically arrogates to the Secretary of State for Environment, Food and Rural Affairs the function of determining UK fishing opportunities in accordance with the UK’s international obligations. What is the Scottish Government’s understanding of what that means? Let me break that down. Is that simply saying that the UK Government is responsible for negotiating with neighbouring states the use of transnational quota allocations—given that under the current system there are always quota swaps, as we know—or is it also about how the quota may be allocated to individual vessels and areas of Scottish waters? In other words, where are the boundaries of the power that the secretary of state is seeking to take?

**Fergus Ewing:** That is a bit of a technical question, so I will ask Mike Palmer to add to my answer in a moment.

We felt that the draft of the Fisheries Bill contained powers in respect of the allocation of quotas that appeared to predate on the powers of the Scottish Parliament—that is, to take away those powers. To be fair to DEFRA and UK ministers, and to put it simply, after we pointed that out, they accepted the argument and changed the original wording. That was a plus and it illustrates that the official-to-official work has had some beneficial results. Let us recognise that. We want to get the job done and not just score points all the time. We felt that powers would be taken away in relation to the framing of international law and quota and some progress was made on that. Unfortunately, there are other aspects of the Fisheries Bill, which we saw at the last minute, that have not yet been resolved.

To do justice to Mr Stevenson’s question, I invite Mr Palmer to answer the technical parts.

**Mike Palmer (Scottish Government):** As the cabinet secretary said, we managed to improve section 18 of the Fisheries Bill. The drafting is now better in terms of protecting devolved competence, but it is still not quite there in relation to things that we consider impinge on devolved competence. There is a distinction between the reserved function, which is to make the international agreement, and the compliance and implementation of that international agreement, which from our point of view is clearly a devolved function and competence.

There remains some wording in the bill that is difficult. For example, it says:

“The Secretary of State may determine ... fishing opportunities ... for different areas of sea”.

We are concerned that that may lead to the secretary of state being able to determine quota limits for Clyde herring or Orkney crab, for example. In our view, that would clearly impinge on devolved competence.

We are still discussing that with DEFRA and I emphasise, that, as the cabinet secretary said, our discussions have been positive and constructive. We are hoping that we can find a resolution to the issue, but it remains a point of difference between us.

**Stewart Stevenson:** Mr Palmer used the example of Clyde herring and, of course, there are also herring elsewhere. At present, does the Scottish Government determine the balance of quota for Clyde herring against herring elsewhere in an overall framework that covers the totality of herring in Scottish waters?

**Mike Palmer:** At present, the European Union, in negotiation across the member states, decides on quota limits and total allowable catches across all stocks. The Scottish ministers have a delegated function to work with the European Union to determine the Clyde herring quota limit. Post-Brexit, we will be moving into a situation where those limits will not be determined by the EU and we are concerned about where the competence should lie.

**Stewart Stevenson:** Perhaps my mind is working in quite a simple way, so I am not clear. At present, the UK and Scotland get an allocation of herring, but who decides on which areas are allocated those quotas? Does the European Union decide what each area—area IVa, IVb, VII or whatever—gets or does the Scottish Government decide that within an overall framework on the species that can be caught in our waters?

11:00

**Mike Palmer:** The UK delegation, which is led by the Secretary of State, will negotiate the UK-wide total allowable catch for each stock. There will then be a process of allocation across the UK, which works according to well-established administrative rules about how the quota should be distributed across the UK. There is a lot of sensitivity about respecting those rules, as you would imagine.

With the UK Fisheries Bill, we are concerned to protect Scottish interests with regard to devolved competence and how international determinations are then administered and implemented in the UK.

**Stewart Stevenson:** You have mentioned administrative rules that basically break down the overall UK allocation into the areas of water. Does the Fisheries Bill that is before the UK Parliament affect the operation of those administrative rules?

**Mike Palmer:** No; it does not touch on them.

**Stewart Stevenson:** Therefore, if the UK sets the overall limits—although there will presumably be external negotiation associated with that—the process of allocation to Scottish waters will remain unchanged.

**Mike Palmer:** That is right.

**Stewart Stevenson:** That is modestly helpful. Cabinet secretary, can you expand on the issue you raised in your opening remarks about the funding of our communities, and the extent to which that is touched on by the UK Fisheries Bill?

**Fergus Ewing:** At present, the EU funds a substantial amount through the European maritime and fisheries fund, which is used for a diverse range of purposes such as helping small businesses—an example would be to help a

business acquire ice-making facilities for processing—helping ports and harbours to effect improvements; and various qualifying projects for companies and other applicants throughout the country.

The UK Government has not implemented the promises that were made in the run-up to the Brexit referendum that EU funding would be at least matched. EU funding is largely from the EMFF for fishing; for agriculture, funding is largely through the CAP. Putting that in context, between 2014 and 2020, EU rural funding is £5,000 million. That funding was promised; the paper that I am holding up shows that Mr Eustice said that farmers would be better off if we left the EU. I will not go through all the specific quotes, but I can provide them if the committee wishes.

My point is very simple: before the referendum, promises were made but we have not had promises about the EMFF, which has been absolutely crucial for the development of fisheries and companies' capacity and the improvement of harbours all around the country; it has been essential to enable those vital projects to go ahead. I have proposed an amendment on funding to ensure that Scottish ministers get at least current EMFF moneys; that will be a matter for the UK Government to debate.

**Stewart Stevenson:** My colleagues will develop the broader funding issues shortly. I have one small final item. You mentioned the sea-fish levy that is taken by the UK and from which we get a limited share back. Does the Fisheries Bill touch on the issue of sea-fish levies? Is it your intention that it should, if it does not currently?

**Fergus Ewing:** The answer is no, it does not, but again, we have proposed an amendment. Mr Palmer, who has helped to draft it, can explain what it is.

**Mike Palmer:** We believe that there is an omission in the Fisheries Bill with regard to the sea-fish levy. For a number of years now, the Scottish Government has been requesting that the UK Government devolve levy-raising powers to Scotland, so we have proposed an amendment to the bill that would provide the sea-fish industry authority, Seafish, which administers the levy, with greater flexibility to exercise its functions separately and differently in different parts of the UK.

The amendment would introduce a new clause that would amend the Fisheries Act 1981, which is the act that enshrines Seafish, to allow that authority to exercise its functions separately in different parts of the UK. In consequence of that, there would be greater flexibility for the way the levy operates in Scotland to be distinct from the way in which it operates in the rest of the UK. We



are also proposing a new clause that would require Seafish to appoint a committee for the purpose of assisting the authority in the exercise of its functions in relation to the sea-fish industry in Scotland, so that we would have a statutory committee tailored towards Scottish needs and circumstances in terms of how that part of the levy is delivered for Scotland.

**Finlay Carson:** I have a brief supplementary on the back of the point about the UK becoming an independent coastal state when we leave Europe. We have heard about fishing effort, quotas and total allowable catches. Is it the case that, whatever quota levels are decided, Marine Scotland will still be able to control the licences for who can fish in Scottish waters?

**Mike Palmer:** Yes, that is correct. That remains a devolved function. Almost all of fisheries management is a devolved function, including licensing, and it will remain devolved.

**The Convener:** We move on to questions on funding. These are questions for both cabinet secretaries, as the current EU funding streams obviously affect both portfolios massively. We have mentioned the CAP and the EMFF, but there is also horizon 2020, LIFE, structural funds and European territorial co-operation funding, so there are massive implications for agriculture, fishing and the environment.

I will begin with a question to the Cabinet Secretary for Environment, Climate Change and Land Reform. What effect could uncertainty about funding for research and development have on how the rural economy and connectivity portfolio works with the environment, climate change and land reform portfolio in relation to environmental issues in Scotland? If replacement funding is not guaranteed, what implications might that have?

**Roseanna Cunningham:** It would have fairly significant implications, which we have been flagging up for some time. There has been a fair amount of recent publicity about horizon 2020 in respect of the reliance of Scottish universities on that funding. It can vary from institution to institution but on average it makes up about 10 per cent of their total research income, so that would be a big collapse. The various research institutes that are not part of the universities structure are similarly dependent on access to horizon 2020, and we already have information that research proposals that involve a UK—or, in our case, a Scottish—component are just not getting off the ground because, from an external perspective, it will cause an issue, so those proposals are not getting anywhere.

The horizon 2020 funding is particularly important to Scotland; because of the really good performance of our research institutes and bodies,

we tend to get more income from it. It works out at €55 per capita in Scotland compared with the UK average of €40 per capita, so, as you can see, the difference is quite distinct. It is an important consideration. Even if replacement funding were, in some way, to be agreed, it is still the case that, at the moment, we get a disproportionately higher level of funding. Is that going to be agreed? If not, we will see a drop, and that is a big concern.

There is a slightly more indirect risk that the loss of EU funding will take people out of networks, and I have already given some examples of joint funding projects with a Scottish or, indeed, UK component just not going ahead. As a result, we are losing the network of research, which, after all, is now undertaken across boundaries. Indeed, it is very rare for it to take place entirely in one institution in one country—you are always going to have partners. That, too, is a big concern.

There are issues with other bits of funding. Fergus Ewing has talked about the importance of the CAP to both portfolios, and that is indeed the case. For instance, it funds agri-environment schemes; that is not necessarily about research but about practical schemes on the ground, which are really important to us.

With regard to European regional development funding, we should bear in mind that around £41.6 million goes to Scottish Natural Heritage for the green infrastructure strategic intervention programme and around £26.4 million goes to Zero Waste Scotland to support resource efficiency and the circular economy. It all begins to add up across a number of programmes and to impact on a number of areas, and it will be a considerable loss to Scotland if no real guarantees are made.

That said, there are some guarantees. As I understand it, they are included in the 2014 to 2020 EU budget plan, but once you get past that, you are into more of a no man's land with regard to where things might go. Again, as I understand it, the UK Government has flagged up a shared prosperity fund, and I think that a lot of this is meant to be brought under that umbrella. However, despite reassurances that devolved Administrations would be involved in the development of that fund, that has not happened thus far. We really do not yet know what that all means, what the calculations will be and what the fund will cover, but, as I indicated at the start of my response, there needs to be a recognition that Scotland punches well above its weight when it comes to accessing funding. It is not just about getting a share of that fund; the question is whether we will continue to get the share that we have been managing to get up to now.

**The Convener:** Both of you have identified quite a lot of areas in your portfolios where there is no guarantee that EU funding will be replaced.

What action have you been taking to put to the UK Government the points about the need to replace that funding? I know that you have been asking for these guarantees for two years now, but given that you have received neither guarantees nor answers, what are you preparing to do in the event of not getting any guarantees fulfilled?

11:15

**Fergus Ewing:** The UK Government would be responsible as the paymaster following the EU exit. You ask what we have been doing. My colleague Roseanna Cunningham and I have been pressing on the issue since the Brexit referendum day. We have been doing so in a concerted fashion, including face to face at numerous meetings that either or both of us have attended with Mr Gove, Mr Eustice and other ministers, including Mrs Leadsom. We have also asked for an amendment to the Agriculture Bill to guarantee funding. There are umpteen quotes that I could use. George Eustice said:

“The UK government will continue to give farmers and the environment as much support—or perhaps even more—as they get now”.

That was in the *Farmers Guardian* on 26 May 2016. Robert Burns wrote:

In gath'rin votes you were na slack;  
Now stand as tightly by your tack:  
Ne'er claw your lug, an' fidge your back,  
An' hum an' haw;  
But raise your arm, an' tell your crack  
Before them a'.

That is, after the voting, you have to fulfil your promises. We are saying, “Do what you promised you would do.”

From the EMFF, €243 million comes to the UK and, of that, €107.7 million comes to Scotland. Peterhead got £5 million for a major project and there was £1.7 million for the pier at Westray, £900,000 for Seafood Scotland to showcase our produce at international trade shows, £6.5 million to fisheries local action groups throughout the country and £2.5 million for aquaculture innovation. The only thing that we know about the shared prosperity fund is those three words, so what is the UK Government playing at?

We have been pressing on the issue, eyeball to eyeball, person to person and face to face and with endless letters, and although we have limited assurances, they really only take us to 2022 or, in the case of non-farm-support pillar 2 payments, to 2020. It is not an accident that the EU funding schemes are in seven-year tranches, from 2014 to 2020 and from 2021 to 2027. That is because the EU recognises that, in fishing and farming, investments are long term. You cannot plan on a year-to-year basis; you need to take a longer-term view.

We have rightly argued the Scottish cause in detail, for hill farmers, fishermen, and environmental schemes and for forestry, which frankly is waiting for assurances, despite the fact that we do about 80 or 90 per cent of the forestry in the UK. At some point, if the UK Government ever gets over the Brexit wrangling that is going on at the moment, it will have to focus on the day job.

**The Convener:** In a situation where you give guarantees and make plans for new payment schemes, is it the Scottish Government's intention to maintain funding for climate and biodiversity projects? Should we have a guarantee of replacement funding for the CAP scheme?

**Fergus Ewing:** At the moment, that funding comes from the EU. We cannot magic up money. If it is taken away by the UK Government because it does not implement the promises, the responsibility will clearly lie with those who made false promises and who overpromised to get votes for Brexit. It would be absolutely rash of me to say that somehow I will find the money that we have taken as read will be there from the EU, because we have had the benefit of its contribution. We cannot magic up money if it turns out that the UK welshes on its promises post-Brexit.

**The Convener:** So, without that guarantee, you cannot make a commitment on biodiversity programmes.

**Fergus Ewing:** We can of course guarantee that we will pass on money that we receive to beneficiaries, and we have done that as a matter of course. However, we cannot pass on money that we do not get.

**Roseanna Cunningham:** That is correct. I flagged up the higher proportion of horizon 2020 funding that we get for research in Scotland compared with south of the border. The global sums of money are also significant. The current horizon 2020 programme runs from 2014 to 2020. Since it launched in 2014, more than €533 million of funding has been secured by Scottish organisations. That is the scale of what we are talking about. How do we step in and replace that amount of funding? It is not easy to do unless we draw down money from a different source, but there is no obvious different source that will deliver on that scale. Maybe the shared prosperity fund will be it, but we do not know, and there is no guarantee. As I said, we are already losing potential research contracts as a result.

**Claudia Beamish:** There are major concerns about all the funding issues but, from an environmental perspective, do you, like me, have particular concerns about the LIFE funding streams? The RSPB and other organisations have highlighted that, with the sort of projects that are involved, such as the successful project to remove

black rats from the Shiant islands, significant amounts of money are needed at one time. Are there concerns about getting a block of funding at a particular time?

**Roseanna Cunningham:** Yes, there are issues about LIFE funding, although it is one of the smaller segments and is not of the scale of horizon 2020. Up until now, in that same 2014 to 2020 budget period, Scottish organisations have received around £9.1 million in LIFE funding. SNH has received funding for habitats and species work and there are partner projects that involve SEPA. The LIFE+ programme is helping throughout the central Scotland green network.

There are a lot of smaller packets of money that are currently being drawn down from Europe and that are very significant. Another one that I have not mentioned is Interreg. The issue spreads over quite a few areas. It is not just about the money, although that is incredibly important; it is about relationships, which will begin to be impacted negatively once we are no longer part of the process. Many projects that are set up will involve people from other places. If you go to any of the research institutes, you will find a noticeable number of young scientists who come from across Europe to work there. There is a worry about how the future will look if they begin to disappear.

**Mark Ruskell:** The Scottish rural development programme is hugely important for catchment-level work between farmers to meet environmental objectives. Can you guarantee funding for the SRDP up to the end of the transition period? Given that you are considering introducing a Scottish agriculture bill, I presume that you are considering how the SRDP is delivered as part of that.

**Roseanna Cunningham:** I will flag up the figures. The agri-environment schemes under the SRDP are receiving around £308 million in the same 2014 to 2020 funding period. I would love to be able to say that we could simply match that if it disappeared, but the truth is that I cannot. That is for the current period. Fergus Ewing will know about the state of the transition period and when it goes up to.

**Fergus Ewing:** It is a matter of record that the guarantees that we have received are for the CAP pillar 1 payments for the 2019-20 scheme year and CAP 2 contracts, excluding technical assistance, that are entered into by the end of 2020.

There is no guarantee or certainty, because the UK Government commitment is to maintain

"the same cash total in funds for farm support ... until 2022."

That begs the question of what "farm support" is. Is forestry support farm support? I do not think so. Is the agri-environment climate scheme farm support? I would not have thought so, although there is an argument for that. The terminology that the Treasury has used in making a distinction about farm support does not have clarity for the purposes of the variety of schemes under pillar 2, some of which have an element of supporting activity on farms but are perhaps designed primarily for other key environmental things, such as the alleviation of flooding. Forestry funding is not directed primarily through farm support.

After the projects entered into prior to 2020, there is really no investor certainty. The trouble with that is that the forestry schemes—I think that this is also the case with the environmental schemes—are long-term projects over a number of years, therefore long-term investor certainty is a sine qua non for any investment decision. The impairment of investment decisions is an increasingly likely scenario, unless the UK Treasury decides to provide clearer guarantees than it has provided at the moment.

In any event, the guarantees for pillar 1 take us up to only 2022. We really have no idea what will happen after that, except that the Treasury has said that direct payments for farmers will stop by 2027. The only thing that we know for sure is that the UK Treasury wants to stop the direct payments that farmers came to expect from Europe and which Mr Eustice and Mr Gove promised that they would continue to receive after Brexit.

**John Scott:** Cabinet secretary, I venture to suggest—

**Roseanna Cunningham:** Which cabinet secretary are you referring to?

**John Scott:** Mr Ewing. I venture to suggest that you are making quite a lot about uncertainty. I do not really want to get into an exchange of Burns quotes, but I refer you to "To a Louse" and the suggestion that:

"O wad some Power the giftie gie us  
To see oursels as ithers see us!  
It wad frae mony a blunder free us,  
An' foolish notion".

I think that you are overemphasising the uncertainty beyond 2020 and 2022. As far as I understand, there is no certainty in Europe beyond 2020, nor is there a requirement for there to be certainty beyond 2022 at this time.

When is an assurance not an assurance? From my understanding and from my knowledge and experience of UK Governments, particularly the current UK Government, I know that when the Government makes an assurance, it has every good intention of adhering to it. I make that point.

**The Convener:** That is not a question. We will move to questions on a no-deal scenario.

**Finlay Carson:** What are the key environmental risks of there being no deal? What is the Government doing to assess and manage those risks?

**Roseanna Cunningham:** We have a number of concerns about our day 1 readiness in the event of there being no deal. We have tried to map the most significant concerns. For example, one concern relates to waste shipment. There is a risk that a no-deal exit and new customs controls could stop or slow down waste shipments. We would see the implications of that waste backing up here quite quickly.

Another issue relates to chemicals regulation. We want to avoid barriers to trade and ensure that we have an effective regulatory system. We would not have that system in place at the point of there being no deal, and there are real issues about unsafe materials entering Scotland.

I have raised with DEFRA—I did so at the most recent DEFRA devolved Administrations meeting—the cross-cutting trade and customs rules. I appreciate that the decisions on those issues are not all being made by DEFRA itself, because it, too, has some concerns about what would emerge around freight transport and shipping in the event of there being no deal. I raised that issue at the DEFRA DA meeting in Cardiff some weeks ago, and I notice that some stuff that appears to have come out of a Cabinet conversation around that very issue is now in the public domain. Those matters would obviously impact on us, too, including in relation to waste shipments and the import and export of chemicals.

11:30

The issue is around protecting supply chains and ensuring that imports and exports can continue in the event of a no-deal exit. Those are the key things that we have considered. I will not pretend that that is an exhaustive list, but we are trying to prioritise the issues that would be impacted most quickly. I have outlined the areas of concern in my portfolio, and I think that food is perhaps the main issue in the other portfolio.

Another issue involves ensuring the enforcement powers of public bodies on day 1. Some issues have arisen in respect of water, which I think have been fairly widely rehearsed in the press. They have to do with the way in which we treat water at the moment and the chemicals that are required to do that. I do not pretend to be an expert on that but, as I understand it, the process is dependent on chemicals being imported from the EU. That brings us back to chemicals and the ability to get stuff in on day 1.

Those are the issues that we must think about in terms of ensuring that we are ready on day 1. In some cases, a bit of stockpiling can go on. Scottish Water can hold several weeks of key supplies, so that might be an answer in some places, but it will not necessarily be an answer if we cannot get waste shipped to where it normally goes. If that happens, it will begin to pile up in Scotland. Those are all the things that we are struggling with in relation to a no-deal exit.

As I said at the start, if there is a deal or we end up not Brexiting, the considerable amount of work that will have been done to plan and prepare for a no-deal exit will have been for nothing.

**Finlay Carson:** What is the Scottish Government doing to keep track of the additional functions and powers that will fall to the Scottish ministers or statutory organisations in the case of a no-deal exit?

**Fergus Ewing:** Regarding the UK Fisheries Bill, there are minor respects in which it has been argued that we will acquire additional powers, some of which are of a technical nature. We believe that, in effect, we already deal with those matters through other means, so there would be no additional imposition. In relation to the UK Agriculture Bill, the reverse is the case, as it is being proposed that powers be removed from, not conferred upon, this Parliament.

**Roseanna Cunningham:** We are using the SI consent notifications process as a tracker. We have not established a separate set-up for it; we are using the consent notification process itself. In the majority of cases, functions will be able to be exercised by ministers in respect of Scotland and by the Secretary of State in respect of the UK, where we consent. There may be some instances in which a consistent and coherent UK-wide approach is the most appropriate way forward, such as in relation to chemicals and some of the regimes that might need to be in place in that regard, but the scenario is constantly evolving.

**Finlay Carson:** Is the Scottish Government relying on the UK Government to track the additional functions or powers that might be coming?

**Roseanna Cunningham:** No. We are working through the consent notifications and we are using them as the basis on which we understand what will continue to be exerciseable here, as opposed to at Westminster. That does not mean that we are relying on somebody else; it is just that that is the process that is working between the two Governments at the moment.

**The Convener:** Both of you mentioned common frameworks and regulatory alignment in your opening statements. In that regard, I have a particular question for Fergus Ewing. It strikes me

that, regardless of what the common frameworks are across the UK with regard to any kind of movement of trade, a lot of that, especially with regard to food and food production, will depend on the international trade agreements that the UK Government makes with other countries. What locus does the Scottish Government have in the decisions around those trade agreements that might be being made as we speak?

**Fergus Ewing:** Sadly, although we seek to play a partnership role in respect of those matters, the UK Government takes the view that they are reserved matters, with which it deals, and it therefore does not seek to involve us in negotiations on, for example, the political declaration and the Brexit deal. We learned only after it was negotiated by the UK that aquaculture and fish will be excluded from the backstop.

There is a particular and pressing problem in relation to trade, and especially in relation to fresh foodstuffs and fish—I am thinking in particular about shellfish, which are perishable and have a very short shelf life. In the event of a no-deal exit, we understand that there is a requirement for the UK to obtain specific permission for the continuance of any exports whatsoever, and, in order for any business to be allowed to continue to export, it will require to register quite a lot of information with Food Standards Scotland, or, in the UK, with the Food Standards Agency. FSS has only just informed businesses in Scotland that that information must be provided by, I think, Wednesday of next week, although it has also been explained that that deadline is not enshrined in law. On a very practical basis, businesses—at this time of year—are being asked to amass an enormous amount of information stipulating every consignment of produce that they have been involved with. In the case of some companies, that will amount to tens of thousands of consignments.

We are also concerned about export certification. If Britain is a third country, which is what it will become, the exporters of food—particularly perishable food—will face problems in relation to the need to satisfy the requirements of the EU in respect of border inspection points and certification. We estimate that, in respect of aquaculture, that could lead to 40,000 or 45,000 certificates.

In short, we would wish a formal place to be given to Scotland in negotiations on international fisheries agreements, and agreements on food and drink and agriculture.

The last point that I will make is that some of our officials, such as those who are involved in fisheries negotiations, are regarded as among the most professional, best qualified and informed and able in the whole of the EU, and they certainly know far more about Scottish fish than their

counterparts down south, because they are steeped in the issue every day.

We are ready to play a positive and progressive part in international trade deals, whether or not Brexit happens, but, if Brexit happens, it becomes especially important that the Scottish voice is heard in an informed and effective way.

**The Convener:** The issue concerns not only trade. Trade agreements might have an impact on acceptable standards with regard to food that we import from countries that we previously have not had agreements with. How might that impact on the agriculture sector? We have all heard about chlorinated chicken, for example, and about other types of meat that might come into the UK that previously have not had a route into our markets. How might that affect the ordinary beef producer in Scotland?

**Fergus Ewing:** Very substantially indeed. I should explain that we have sought an amendment on that, but it has not been accepted.

As a matter of practicality, the process of exporting, whether it involves beef, wild fish or farmed fish, involves well recognised logistical patterns using trucks, ports and, in some cases, aeroplanes. Almost all of those exports are time critical, particularly in respect of perishable goods, where the loss of a few hours could mean that shellfish, for example, becomes valueless.

That is one worry. Another worry is that, were Brexit to happen and Britain became a third country, it is quite imaginable that the EU countries that have their own shellfish and beef sectors would give preference to their sectors in respect of technical issues about the correct process with regard to the importation of Scottish produce. That could cause a lot of practical problems in Scotland.

I know, for example, that the representative of the Scottish Creel Fishermen's Federation has spoken out clearly about those issues, which particularly affect Mr Carson's constituency—and others too, I expect—and the risks that have been outlined are practical and real. Part of our job is to prepare for the worst while hoping for the best. As I mentioned, Food Standards Scotland is quite heavily involved at the moment.

**The Convener:** I have a question for the Cabinet Secretary for Environment, Climate Change and Land Reform on environmental standards. Are the Scottish Government and the UK Government in agreement about where powers to set environmental standards lie? Currently, they sit with the European Commission, but what would happen in all the policy areas in the event of a no-deal post-Brexit situation? Do we have any guarantees about whether those powers

would come to the Scottish Government, or is that still being discussed?

**Roseanna Cunningham:** I would not argue that there are any actual guarantees about anything at the moment. Where there is agreement between both Governments about where powers to set environmental standards lie, there is broad agreement that they will return to Scotland—if that is where they have come from—through the current joint SI programme. That is the broad agreement, but there are a number of areas where there is a real disagreement between us and the UK Government about the split between reserved and devolved competence. I have just written to the committee about the Convention on International Trade in Endangered Species of Wild Fauna and Flora being one of those areas where there is a difference of opinion on devolved and reserved powers; I have also written to UK ministers making the position clear. At the moment, although there is a broad agreement in principle, in practice assertions are being made about what is devolved and what is reserved that we do not necessarily agree with. That will continue to be an issue.

On the broader question of environmental quality, some issues are subject to framework discussions as well, but I need to make it clear that no actual frameworks have been agreed at all, whether in the rural portfolio or in my portfolio. Conversations have been going ahead, and in my portfolio there are discussions about frameworks on chemicals, two on environmental quality, one on waste and producer responsibility, one on ozone-depleting substances and fluorinated gases, and one—on which the committee has taken quite a lot of evidence—on the emissions trading scheme, which relates not to DEFRA but to the Department for Business, Energy and Industrial Strategy.

Conversations are taking place, but there is no actual agreement on frameworks, and no actual agreement yet on how a framework—should there be one—would work. A framework is not a framework if there is no equality among those sitting round the table. Those are fundamental issues that still bedevil those areas—even areas such as the EU ETS, and I have been banging on the door about a framework on that for nearly two years now. We could have had one already if there had been any response from BEIS that was in any way meaningful.

**Angus MacDonald:** I turn to the issue of environmental governance. I thank you for the letter that we received yesterday, which gave us clarification on environmental governance. Before we explore the details of the letter further, could you advise the committee about the latest discussions with the UK Government and other

devolved Administrations regarding a potential single UK governance body?

**Roseanna Cunningham:** I need to make it clear that there is no proposal yet for a single UK governance body. The DEFRA proposal is for England only, because both Wales and Scotland asked to be removed from it—in effect, it was a case of our being advised of something within 24 hours of publication, with no actual discussion prior to that of how anything like it would work. DEFRA is proposing to consult on the single body for England only, but I do not think that it is actually consulting yet.

11:45

**Katriona Carmichael (Scottish Government):** DEFRA will lay draft legislative clauses on that before the end of the year, in line with the EU withdrawal act.

**Roseanna Cunningham:** We are still a little uncertain about that. It goes back to the point that I made about frameworks, because any UK-wide body would have to accept equality of membership of that body. Therein lies the rub with an awful lot of what emanates from Westminster.

At the moment, our projected consultation does not start by saying, “Here’s the proposal, and now we’re going to consult on it.” The consultation will get responses on what is required and we will then use that to develop a longer-term proposal if that is necessary, although there will also be some things that are required in the short to medium term.

The DEFRA proposal will not be in place on day 1. Even if the UK Government sticks to the timetable for its environment bill and all the rest of it, its proposals are unlikely to be in place until a couple of years down the line. The UK Government will have the same day 1 issues that we will have, and I am not at all clear about what it is doing in that regard. I do not know whether Katriona Carmichael knows about that.

**Katriona Carmichael:** I do not.

**Fergus Ewing:** I make the general point that frameworks do not mean uniformity across the UK. There is a danger that the term contains an implicit assumption that the frameworks will somehow be designed to ensure uniformity of policy application throughout the UK. However, fisheries, the environment and agriculture are devolved, so we do things differently here. For example, Parliament has agreed to the less favoured area support scheme, which is still extremely important in Scotland; in Mr MacDonald’s native heath, it is vital. In Scotland, 85 per cent of the land mass is LFA, whereas down south they decided to stop the

scheme seven years ago. That is just one obvious example.

Frameworks do not mean uniformity, but they do mean dealing with things such as the application of state aid and the internal market. For me, the key is that those things should be agreed with but not imposed on the Scottish Government and the Scottish Parliament.

**Angus MacDonald:** Okay—thanks.

My next question is for the Cabinet Secretary for Environment, Climate Change and Land Reform. In your letter, you gave us notice that the consultation will be delayed, and this morning you mentioned that that will be for a brief period. You will probably find this question somewhat infuriating, but can you indicate how brief the delay will be?

**Roseanna Cunningham:** One of the problems is that there was no warning from the UK Government of the proposals in the backstop protocol for

“an independent and adequately resourced body or bodies”

in respect of environmental governance. Basically, we knew nothing about that until we were confronted with it. Officials are engaging with DEFRA on its plans for legislation to establish a governance body for England and reserved matters only, but also to try to bottom out what is meant by that phrase in the backstop protocol. We need to get a bit of clarity in and around some of this.

On the delay in the consultation, I am talking not about six months but about a relatively short period while we try to get further clarity on the matter, which appeared with no advance warning or consultation.

**Angus MacDonald:** Clearly, you have to look at new engagement proposals. How do you plan to engage with stakeholders, including the statutory agencies, to develop plans for environmental governance?

**Roseanna Cunningham:** Considerable engagement is already happening. The consultation will obviously be an engagement in itself, but it is built on the roundtable work that has been done. We are engaging across the public sector with bodies such as SEPA and SNH on the development of the consultation, and we have also ensured that wider stakeholder interests have been engaged with informally. That has been going on throughout the summer and autumn, so that stakeholders know what is happening; work has been done consistently over that lengthy period of time, so engagement is already in place. I do not think that anything that we are discussing will come as a huge surprise to stakeholders,

because they have been pretty much engaged in the conversation with us all the way along.

**Angus MacDonald:** I have a final question about the consultation. Are you considering the option of introducing other new Scottish institutions, such as an environmental court or tribunal? If memory serves me correctly, an environmental court was in the SNP manifesto a couple of elections ago.

**Roseanna Cunningham:** I cannot speak to the manifesto from a couple of elections ago. We still have to finalise the consultation paper, which will cover general questions about the longer-term enforcement needs, but any such proposal could not be in place immediately, so my concern is to ensure that everyone focuses on what is needed in the short and medium term as well and thinks about that. We will continue to try to engage with DEFRA about what it is talking about at the UK level, to clarify what it means in the backstop protocol.

**Angus MacDonald:** There was a recent suggestion that an environmental court could be tagged on to the Scottish Land Court.

**Roseanna Cunningham:** The danger is that if everybody rushes to the end point they will forget that there is a period—starting, potentially, on 29 March 2019—in which we will immediately need to manage those issues in the short and medium term. Some of the long-term proposals would take a considerable amount of work. As I indicated, although the UK Government is suggesting an England-only body, there is no indication that I can see that it would be up and running within the next two years. Katriona Carmichael may have further information on that.

**Katriona Carmichael:** I understand that the UK Government’s proposal is designed to put something in place for the end of the implementation period, if that goes ahead.

**Claudia Beamish:** I would like to discuss with the Cabinet Secretary for Environment, Climate Change and Land Reform the statutory environmental principles, which are obviously important in underpinning the way forward, their impact and how she envisages the requirement to have regard to them

“where they are relevant to the provisions being made”.

How would that work?

**Roseanna Cunningham:** All our existing domestic environmental legislation is already based on those four principles, and the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill includes mechanisms that would embed that for the future. The keeping pace power in the continuity bill would enable us to keep our environmental legislation in line with

the standards in EU law. That is important because it will not be enough simply to mirror EU environmental law as at the point of departure; we must find a way to continue to reflect the changes in EU law, which we expect to be progressive. We want to ensure that that is what happens. That is what we are talking about in the continuity bill—making the principles statutory, although we already have regard to them in all the domestic environmental stuff that we do, and embedding the commitment to continue to reflect changes by making that a statutory commitment.

**Claudia Beamish:** Do you have concerns about the potential implications of the European Union (Withdrawal) Act 2018—and, potentially, the UK's written agreement—containing different environmental principles from those in the Scottish Parliament's continuity bill?

**Roseanna Cunningham:** At this stage, it is a little difficult to say what the implications will be. Officials are engaging with DEFRA on the implications for devolved Administrations and Parliaments of the UK Government's proposed approach on principles. Obviously, the continuity bill applies to the Scottish ministers and includes a commitment based on the four EU environmental principles, which we all agreed at the time was the right thing to do. The commitment in the withdrawal act includes duties on the secretary of state and ministers of the Crown in relation to the four principles that we already know about along with five other principles. We need to do some work on the implications of that, because those are not clear.

**Claudia Beamish:** Of course, our continuity bill has implications for animal welfare requirements and the recognition of animals as sentient beings, which are not in the UK act.

**Roseanna Cunningham:** Indeed.

The other thing to keep in mind is that everything that the EU does operates on the basis of the four key environmental principles. We are trying to work out exactly how the proposals will work, from the perspective of devolved versus reserved issues and from our perspective of wanting to mirror what the EU is doing so that, as the EU makes progress, we do so, too.

**Claudia Beamish:** I appreciate your previous point about environmental court enforcement, but could you make any comment on how environmental principles will be monitored and enforced as we progress?

**Roseanna Cunningham:** That is one of the things that we expect to be discussed in the consultation. I do not want to prejudge what is in the consultation or the outcome of it. We will try to use the consultation to come to a decision on that.

**The Convener:** Finlay Carson has a brief supplementary.

**Finlay Carson:** There is an argument that we need to bring together the work on principles and governance with that on the Scottish environment strategy. Have you had any thoughts on that? Is there potential for combining the two processes or at least looking at the consultation results and considering how to bring the two together?

**Roseanna Cunningham:** In a sense, I expect that the consultation will kind of do that anyway. I do not think that people will see an enormous differential between the two. The continuity bill discussions were about principles and governance, and a specific decision was made in relation to that bill. We tend to talk about principles and governance because of the commitment that we made through the continuity bill. The commitment to develop an environment strategy is a different commitment.

I suspect that it will be difficult to keep the three things separate, but the process for the environment strategy has not been the same as the process that we have been undertaking in relation to governance and principles. That is for the obvious reason that one arose directly out of a legislative commitment—albeit that the legislation has not actually been finalised yet and we do not know what the position will be but we have decided to proceed anyway—and the other is separate and is on the environment strategy. We are not shmooshing them all together deliberately, but I suspect that it will be hard to separate them.

**Mark Ruskell:** The environment strategy has been delayed. How can we develop an agriculture bill without the underpinning of an environment strategy?

**Roseanna Cunningham:** There is no fixed commitment to an agriculture bill at this point, so we are first.

**Fergus Ewing:** Will Mr Ruskell perhaps explain what he thinks it is necessary to do? An agriculture bill may or may not be necessary for specific, limited purposes. I will be happy to try to answer his question if he does not mind expanding on it a bit.

**Mark Ruskell:** One point would be around the redesign of agricultural subsidies.

12:00

**Fergus Ewing:** In the stability and simplicity paper, which I have mentioned, we have taken forward our proposals for providing the stability and certainty that I think farmers and crofters would wish to have. We have already set out a vision whereby we can have a period of stability and simplicity over five years—not to 2022, but



starting from 2019 and running beyond that, to 2024. We have set out our vision in what we believe is the most detailed plan in the UK for proposals on how we will move on from the CAP. I hope that we will have a chance to debate that in Parliament before the end of the calendar year, if business permits, although Brexit is having a predatory effect on our parliamentary timetable as well as on other things.

**Mark Ruskell:** Perhaps I can focus you, cabinet secretary, on an area where we are clearly failing, which is biodiversity. In June this year, the committee heard in evidence that we are failing to deliver on seven of our 20 biodiversity targets, and one of those key targets is on habitat loss. We know that a major driver of habitat loss is agricultural intensification and that there are opportunities there, but when we asked your officials in June what progress the Government had made in considering the redesign of agricultural subsidies to deliver biodiversity, your official said that the thinking had just started and that the Government would return to the matter at some point later this year. Where are we—

**Fergus Ewing:** With respect, my—

**Mark Ruskell:** May I finish my question? Where are we in relation to a response to that issue and the target on agriculture policy?

**Fergus Ewing:** I was going to say that I work closely with my colleague Roseanna Cunningham on all these things. I am very pleased, for example, that we have recently announced that the agri-environment climate scheme will continue for a further funding round. On a practical matter, that will make a substantial contribution to the sorts of things that Mr Ruskell—as well as the Scottish Government—wishes to see.

Convener, the question seems not to be directly related to Brexit, which I thought was the primary focus of the debate today, rather than a general discussion about what our agricultural and environment policies should be. However, I will be happy with my colleague to write to the member to bring him up to date on what is contained in our various proposals across the two portfolios.

**The Convener:** Do you have questions on an environment bill, Mr Ruskell? We are pressed for time.

**Mark Ruskell:** I have questions on the environment strategy. Post-Brexit legislation will emerge and there is potential for an environment bill and perhaps an agriculture bill as well. Mr Ewing said in his comments to the food commission that a silo problem exists in Scotland, and we have the response from the agricultural champions in their report, where they say that there is fragmentation between the policies and, again, a silo mentality.

How do you intend post-Brexit to take forward an integrated policy between environment and agriculture? How will you ensure that the environmental principles that we have just discussed, which will be in an environment strategy, will be embedded in the post-Brexit subsidy regime that will emerge?

**Fergus Ewing:** I do not think that that was necessarily a fair characterisation of all the findings of the agricultural champions. We work together very closely on these matters and we are doing a great deal. For example, we are looking at what more we can do to improve environmental practice in farming. I mentioned the agri-environment climate scheme, and there are many other schemes to promote biodiversity and the environment. I think we are achieving a lot of progress, in large part due to the good will and the desire of farmers and crofters to farm sustainably. After all, they are looking, in most cases, to pass on their land to future generations.

**Roseanna Cunningham:** We are having a discussion about environment strategy and intend to give a strategic statement of ambition, which will apply across Government—it will not be just for me. An environment strategy across Government will help to co-ordinate action and guide future activity, particularly in relation to environmental ambition.

At the moment, we are having a conversation along those lines. We are considering responses to the online discussion about the strategy and engaging with public bodies and stakeholders to inform its development, as I indicated earlier. That process will be gone through before any legislative decisions are made about either a possible agriculture bill or an environment bill, which I currently have absolutely no plans to bring forward.

**Mark Ruskell:** But no strategy will be finalised.

**The Convener:** That must be your final question, because we have run out of time.

**Roseanna Cunningham:** As I have just said, we are discussing the strategy right now.

**Mark Ruskell:** The letter to the committee says that there will be a delay in the completion of the strategy.

**Roseanna Cunningham:** Yes, for a very short period, because we have to clarify what is happening across the board on governance, principles and strategy, with respect to the deal that is currently being discussed in Westminster and its implications, so that we do not prematurely publish something that turns out to be of limited use because of a situation that is not under our control.

**The Convener:** Thank you. We have run out of time—we have actually gone over time—so I will bring the session to a close. I thank both cabinet secretaries and their officials for their time this morning.

That concludes the agenda items to be held in public session. At its next meeting, on 11 December, the committee will hear from a round table on biodiversity funding and implementation. It will also hear evidence from stakeholders on the REACH (Amendment) (EU Exit) Regulations 2019 and from the minister on the Environment and Wildlife (Legislation Functions) (EU Exit) Regulations 2018.

The committee will now move into private session.

12:07

*Meeting continued in private until 12:28.*

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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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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