



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 23 April 2019

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
12th Meeting 2019, 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:

Stephen Freeland (Scottish Environmental Services Association)

Iain Gulland (Zero Waste Scotland)

Janice Milne (Scottish Environment Protection Agency)

Linda Ovens (Chartered Institution of Wastes Management Scotland)

Libby Peake (Green Alliance)

Silvia Segna (Chemical Industries Association)

Tom Shields (Chemical Sciences Scotland)

Rebecca Walker (Scottish Environment Protection Agency)

Michael Warhurst (CHEMTrust)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 23 April 2019

[The Convener opened the meeting at 09:32]

Decision on Taking Business in Private

The Convener (Gillian Martin): Welcome to the Environment, Climate Change and Land Reform Committee's 12th meeting in 2019. I remind everyone to switch off their mobile phones or put them on silent, as they might affect the broadcasting system.

Under agenda item 1, the committee will decide whether to take agenda item 3 in private and whether its consideration of evidence taken in relation to European Union exit should be taken in private at future meetings. Are we agreed to take those items in private?

Members *indicated agreement.*

EU Exit and the Environment

09:32

The Convener: Agenda item 2 is evidence on EU exit and the environment. We will focus on waste and chemicals, and will take evidence from two panels.

I am delighted to welcome our first panel, who will focus on waste. Linda Ovens is director, Entec Solutions, and centre councillor, Chartered Institution of Wastes Management Scotland; Libby Peake is senior policy adviser, resource stewardship, Green Alliance; Stephen Freeland is policy adviser and co-ordinator, Scottish Environmental Services Association; Rebecca Walker is head of function (materials), Scottish Environment Protection Agency; and Iain Gulland is chief executive officer, Zero Waste Scotland. Good morning to you all.

I will ask quite a broad question—the witnesses should indicate to me whether they want to give a view on it. What are the key risks to the waste sector of EU exit of whatever flavour?

Stephen Freeland (Scottish Environmental Services Association): Obviously, waste exports are a big issue for us. It might be worth my clarifying first of all what I mean by “waste exports”.

There are two types of waste that we export from Scotland and from the United Kingdom as a whole: recyclable waste and non-recyclable waste, which is largely defined as refuse-derived fuel and is for continental incineration plants. The biggest exposure with Brexit relates to the RDF exports. Our recyclable waste generally goes outside the EU to the far east; at worst, it transits through Europe, where there might be issues around border controls. Most of our waste is not exported to Europe; it is exported to the far east. A lot of our discussion, exposure and risk relate to the RDF non-recyclable waste that goes to Europe.

The Convener: Can you elaborate on what the risks are in relation to RDF?

Stephen Freeland: The initial risk is whether we can continue to export RDF. The UK as a whole exports 3.5 million tonnes of RDF, but the Scottish figure is a lot lower at about 100,000 tonnes. The biggest concern is whether we can export that waste to Europe. That has been addressed recently, because the approvals and documentation that allow the waste to be exported have been agreed with all the member states in Europe that are happy to allow the existing procedures to continue to apply. Therefore, even in a no-deal situation, that waste could still be exported.

The problem is that, although there is no legal impediment to stop the waste being exported to Europe, there is still the issue of border controls and potential delays and friction. There is talk of tariffs, which we might want to discuss, but a bigger threat than tariffs is the exchange rate and the fall in the value of sterling—that would be even worse than any tariff that might be imposed.

The issue is what happens at the border. I gather that there is a 5 per cent inspection rule, which means that 5 per cent of all exports will be stopped, whereas, at the moment, they can go through regardless. Therefore, there will be some border friction in relation to exports. I do not think that anyone is worried about there being a meltdown, Armageddon or catastrophic circumstances; it is about things slowing down.

The Convener: There will be potential cost implications.

Stephen Freeland: Yes—right down the supply chain.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Will there be an economic impact, an environmental impact or both? Where does the balance lie on the narrow subject of RDF?

Stephen Freeland: It will be a bit of both. We are looking largely at the economic impact—the cost of transport and so on.

On the environmental side, if for any reason Europe were not to take our RDF, which I do not think is likely, this country does not have the capacity to handle it. Therefore, in the short to medium term, we will be reliant on the export route. The regulations are still there and can be rolled forward, so I do not think that there is concern on the environmental side. We are mostly concerned about the economic impacts.

Libby Peake (Green Alliance): I want to clarify that there are probably two different types of impact, specifically in relation to waste exports. First, there is the regulatory impact, which has largely been dealt with—as much as it can be—by Government and border officials who have ensured that, theoretically, we will be able to continue to export waste, as Stephen Freeland said.

However, there are also operational impacts, which are expected to be severe for at least three to six months. There is not much that we can do, in terms of regulation, to ensure that there are no such impacts, because there will be plenty of knock-on impacts at the ports. We will be trying to export all sorts of other things as well as waste, and we expect that waste will not necessarily be prioritised over things such as food and medicine. There is a real risk that things could back up at ports. That could be a problem if exports such as

paper or RDF, which degrade and are potential fire hazards, are involved; there are also storage issues.

There are also all sorts of potential impacts in relation to the availability of lorries to transport things and the availability of labour. A lot of people who work in the waste and resources sector come from eastern Europe, and I heard that, after the Christmas break, 30 per cent of such workers have not come back. In addition to things backing up at ports, there might be lorry shortages, as a result of gridlock or lorries not being able to get into the country to then leave it, and shortages of labour to deal with the waste.

Linda Ovens (Chartered Institution of Wastes Management Scotland): I will pick up on the economic side of things. Environmentally, degradable waste cannot hang around ports, waiting to leave the country, and we cannot deal with such waste ourselves at the moment.

As I understand it, we can ship RDF where there is an existing agreement; however, although that agreement will continue, there are an awful lot of public sector organisations, in particular, that will be looking to use that route in the next 18 months prior to the biodegradable landfill ban coming in in 2021. New contracts need to be set up, and the timing in that respect is very important.

The majority of the existing contracts are short-term, one-to-three-year contracts, and most of them are linked to the retail prices index, rather than fixed price. As a result, the question that the market is asking is: if there is extraordinary inflation of, say, 30 per cent, how will we cope, cost-wise, with those contracts and be able to pay for them?

The Convener: Any waste has some value. Is it fair to say that there is competition between countries with regard to turning waste into RDF? If waste from the UK becomes too expensive compared with that from other countries as a feed stock for whatever, could we be left with it, simply because we do not have any route for getting rid of it?

Linda Ovens: We actually pay for the waste to be taken and used as RDF, so it is a cost to us. That is why the indexation on top of what you might call the gate fee could be unpalatable to us or something that we just could not afford.

The Convener: And that effectively means that we end up with waste that we in the UK do not have the capacity to deal with.

Linda Ovens: We do not have that capacity at the moment, no.

The Convener: Right. I think that Mark Ruskell has a question on this issue.

Mark Ruskell (Mid Scotland and Fife (Green)): Does it make sense in the long term to take refuse-derived fuel outside the UK? How can we build the capacity to recycle greater components of that waste here instead of sending it abroad for incineration, and what would be the timescale for delivering that capacity in the UK?

Linda Ovens: I am involved in a number of infrastructure and development projects at the moment. It is a case of striking a sensitive balance between the long-term availability of that waste, everything that we are doing to minimise it and the various projects that are being taken forward. The capacity is being built, but I think that a five or six-year window from today would provide some residual capacity instead of our having to export the waste. It is therefore not something that can be dealt with in the short term.

As Libby Peake has mentioned, the concern with regard to all infrastructure and construction projects and the construction industry relates to manpower and whether our EU workers will return home—and, indeed, whether there will even be construction companies to build that infrastructure, if we want it to be built. At the moment, construction contracts are having clauses put into them, but the clauses are not all the same. Everyone wants protection at various levels from EU exit, and it will be very difficult for the procuring authority to know what it will be paying. Procuring authorities cannot get a fixed fee from the market; they do not know whether there will be construction companies that will want to deal with them; and there is a great legal and contractual debate going on about the protection that can be given.

Iain Gulland (Zero Waste Scotland): What Linda Ovens is talking about is building incineration capacity in Scotland to deal with waste instead of its being exported, but I think that Mark Ruskell's question was more about recycling or reprocessing capacity in Scotland. As you will know, we are en route to developing a more circular economy, and we have ambitions in that respect. Those opportunities are real and present for us in Scotland in the policy framework that the Scottish Government has set out and which is being delivered by a number of partners.

However, the challenge is getting the time to do the work, and the ability to export waste is acting almost as a buffer until the opportunities that I have mentioned are realised. If we suddenly have to take all that waste back, the focus will be on how we get rid of it, and one real challenge will be building excess capacity that we do not actually need and which will make it harder to make the commercial argument for some of those recycling opportunities. We need a much more structured approach; indeed, that is what we and others are

looking at with regard to our reprocessing capacity.

09:45

Things are happening, and there is a lot of interest in delivering reprocessing capacity in Scotland for plastics, in particular, and other key materials, but Brexit does not help on a number of fronts. There is uncertainty in relation to inward investment. There is also uncertainty from companies here that want to invest in such infrastructure and their understanding of what the global market will look like for Scotland, including the currency impacts and the flow of material in Scotland and the UK.

On the material flow in the UK, if the UK, which will be faced with the same challenges that we are talking about happening in Scotland, starts to build reprocessing capacity for key materials as well, there will be the opportunity for our materials to leave Scotland and go to the rest of the UK, where there is obviously a greater amount of the stuff relative to what we have here.

The Convener: That leads on to my next question, which is on the EU circular economy package. Will the Government have the capacity to deliver those measures outside the EU? We will not be part of that package any more, but I imagine that it will be something to which we will aspire.

Iain Gulland: The aspirations are exactly the same; they are very much aligned to that package. In fact, I think that Scottish ambitions go beyond it. Our activities on the circular economy were ahead of those in most EU member states. In developing a framework and programmes to deliver a circular economy, we have been up and running for some time, as you know.

We are already seen as a leader on the circular economy, but aspects of Brexit could severely dent the focus on that journey. Obviously, it is a real challenge if everybody is talking about Brexit or EU exit rather than thinking about climate change, resource efficiency and the circular economy. Some of the small and medium-sized enterprises that we engage with tell us that, for obvious reasons, they are worried about what will happen with the logistics and how they will get rid of their produce if there is a sudden exit from the EU, rather than thinking about food waste. There are real challenges in relation to the uncertainty and how we tackle it, from an individual business point of view and even from a consumer point of view.

Ultimately, we need investment. We are seeing a lot of interest, both outside Scotland and internally, because of the Government's ambition and the policy framework that it is leading on, but

all the aspects that relate to trade, tariffs and currency create uncertainty at this time.

Rebecca Walker (Scottish Environment Protection Agency): An important part of SEPA's preparation with the Government is to ensure that environmental legislation continues to operate on EU exit day. The requirements and standards placed on businesses will not reduce. We want the same compliance in terms of authorisations, and we continue to work with them on compliance and moving beyond that. As Iain Gulland said, we have ambitions in Scotland that go beyond compliance; we want to help businesses look for opportunities in the circular economy.

The Convener: Claudia Beamish wants to ask a quick question.

Claudia Beamish (South Scotland) (Lab): Thank you, convener. This is a brief supplementary question, which is possibly only for Iain Gulland, although other panel members should feel free to answer it, too.

Iain Gulland highlighted some challenges and clear opportunities in relation to the circular economy. I know that Zero Waste Scotland supports SMEs and communities a lot. To what extent are you able to assess the impact that new ventures will have on communities? To what extent can you pre-empt those impacts? It is good to be ahead of the curve on incineration and other things that might cause communities concern.

Iain Gulland: I believe that across Scotland there are opportunities in the circular economy that could be embraced by communities through social enterprises and small businesses. We are seeing a lot of interest in reuse and repair, for example. The circular economy is not just about building big facilities in the middle of Scotland; it is about diversity across the landscape. The opportunities include dealing with materials at source in communities, instead of trucking them around.

We are even seeing changes to scale: some technologies to deal with organic waste are now smaller in scale, for example. As I have said, that is the real excitement of the circular economy. It is about not dealing with waste in the old traditional way, in which we build up waste and try get somebody to build something on a large scale to deal with it. The circular economy approach is much more distributive across the economy. We have done work in the cities—in Glasgow, in particular—and in the north-east and Edinburgh, and we have moved out to work in the Highlands and on some of the islands.

The opportunities are real, and people recognise them even at economic-development level, in terms of small business opportunities and engagement with communities. The exciting thing

that puts Scotland in the lead is that it is not just trying to deal with waste, but is trying to develop a different system in which there are jobs and social opportunities, as well.

John Scott (Ayr) (Con): You spoke about the opportunities of the circular economy. Could you give me one or two practical examples of the opportunities that arise from its development? The witnesses need not all reply.

Libby Peake: Green Alliance has done some research with WRAP—Waste and Resources Action Programme—on job opportunities from the circular economy. That research found that across the UK we would have a net gain of 102,000 jobs if there were to be a truly transformational shift to a more circular economy that includes things such as treating organic waste differently, and open-loop and closed-loop recycling. There should be a lot more emphasis on repair and remanufacturing. The jobs would be across the skills spectrum, from the lowest skilled to highest skilled, and would often be in areas that used to have industry but no longer have it, and where people would use their skills to repair and remanufacture. There are job opportunities when waste and resources are dealt with appropriately. There are good job opportunities in relation to closed-loop infrastructure, such as from more plastic recycling plants or anaerobic digestion facilities.

John Scott: Can anyone else give me examples of one or two opportunities? What about things like refurbishing cars and fridges? I am just asking the daft laddie questions.

As a hill farmer, I declare an interest. I make do and mend, and all my life I have recycled and refurbished everything that I have ever had or owned and turned it into something for the next generation. Are we talking about doing more than that?

Libby Peake: That is a big part of it, but we are looking at the whole economy and at dealing with every resource stream differently; for example, putting fewer resources into manufacturing processes to begin with, and constructing things differently. If we change the approach to construction, which has a massive environmental impact, we could drastically reduce the amount of carbon emissions from it and resources that go into it. We must think about the entire economy: refurbishing is a big part of that.

Linda Ovens: The circular economy focuses upstream and looks towards reducing waste and not having a waste-management industry. Now we talk instead about a materials-management industry. We must certainly think at the front end about remanufacturing and redesign, so that we never have to deal with waste. It is commonly said that if there is waste, design has not been done

correctly. The real focus should be on not producing things that do not last, and on producing things that can be disassembled and reused in the future.

I will pick up on comments about jobs, because we keep talking about the opportunities for jobs. My comment about workforce is not just about incineration and back-end processes; it is a general workforce concern that is not just about the waste industry. Materials management offers many job opportunities but—again—we are heavily reliant on EU staff at the moment, and we do not know what will happen with that in the future.

John Scott: Is that a universally agreed view?

Witnesses: Yes.

John Scott: Thank you.

I will move on to a no-deal exit from the European Union and uncertainty about the EU. What are the key risks of a no-deal exit at this stage, and what involvement, if any, have you had in no-deal planning?

Rebecca Walker: We have worked closely with the Scottish Government in providing technical expertise and advice in preparation for potential outcomes from EU exit. Recently, our focus has been on a no-deal exit. The aim is mainly to ensure that Scotland's environmental standards are protected after we leave. For SEPA, the risks from a no-deal exit are about waste storage and about delays and disruptions at ports, which relates to the initial question on exports. SEPA has set up an internal governance group and has carried out scenario planning with the Scottish Government.

If there is delay and disruption at ports, waste operators will be advised to store their waste temporarily on site within their permit conditions. If they are unable to do that or to find an alternative place for excess storage, we encourage them to engage in early dialogue with SEPA. We have also considered whether, if we have delay and disruption at ports for waste exports, we have the capacity to deal with that waste in Scotland, and we have concluded that we do have capacity.

Another part of the scenario is that perishable goods at ports might become waste, so we need to consider what could be done with them. Our advice is that they should be dealt with in line with the waste hierarchy, which means that they should be redistributed to be used for animal feed, anaerobic digestion, composting, energy from waste and, finally, landfill. We will work with the businesses involved if that becomes the reality.

Libby Peake: The Green Alliance convenes greener UK, which is a network of environmental non-governmental organisations that are watching

the Brexit process in order to try to ensure that it does not harm the environment and that standards are enhanced. We have been watching the statutory instrument process in the Westminster Parliament, and we would say that the pace of legislation coming through has been absolutely relentless. The process is now largely complete, but more than 10,000 pages of technical legislation have been passed, a quarter of which has been laid by the Department for Environment, Food and Rural Affairs and so will affect the environment.

We do not have sufficient capacity to have studied absolutely everything carefully, but the things that we have noticed are worrying. First, from the start there has not been proper stakeholder engagement. DEFRA belatedly set up a reading room so that we could look at draft legislation before it was officially laid, but because that came so late in the process, problems were not rectified and it was too late to do anything.

The process was intended to be largely technical and to ensure that the regime could function in the event of a no-deal exit or other exit, whenever it happens. That has largely been the case, but there have been omissions and worrying changes that are not merely technical. Quite often, DEFRA has stripped away requirements to report to the European Commission and has got rid of things such as advisory committees. That is not necessarily the case with waste legislation, which the committee is discussing today. However, it has been the case with the registration, evaluation, authorisation and restriction of chemicals—REACH—legislation, which the committee will look at, in respect of which advisory committees have been stripped away. Overnight, the advisory committees on socioeconomic analysis and on risk assessment, and the member state committee will disappear and are not being replaced with anything robust to ensure that the UK system is as good as the EU system that we will leave. There are real concerns about the SI process.

Now that the immediate threat of a no-deal exit has diminished, we have a good opportunity to call for the situation to be reviewed and for changes to be made to the SIs to ensure that they are adequate and are up to the task of ensuring that the environment will be as well protected when we leave the EU as it is now. Currently, it will not be.

John Scott: Is it the general view that the SIs that the UK Government has passed are not fit for purpose, or is that just your view?

Libby Peake: It is definitely my view, and it is the view of the greener UK network generally that there are mistakes that need to be rectified, and that we need to look at some things again. It is possible to do that. The REACH SI that was approved has already been amended by two

further negative SIs. Unfortunately, those do not address our concerns, but that shows that it is possible to address technical problems through further secondary legislation.

Rebecca Walker: I will speak about the two waste-specific SIs that have come in at UK level. The first—the Waste (Miscellaneous Amendments) (EU Exit) (No 2) Regulations 2018—was to correct deficiencies where a reference to EU law or an EU institution needed to be changed. There was no change in policy: the policy has been transferred in order that we keep the same environmental standards as the EU.

10:00

A second 2019 SI—with the same name—addressed the producer responsibility regimes for end-of-life vehicles, packaging, batteries and waste electrical and electronic equipment. Again, there was no change in policy: the SI corrects deficiencies or fixes, where there were references to EU law, and was designed to keep the same environmental standards. There was a straightforward swap, with regard to environmental standards. There was also a Scottish statutory instrument on amendments that were needed in relation to technical standards on, for example, landfill, end-of-life vehicles, waste electrical and electronic equipment and batteries. We are comfortable that the waste legislation in the two UK statutory instruments and the Scottish statutory instrument have maintained the environmental standards.

Stephen Freeland: I will go back to the original question on a no-deal Brexit. There has been talk of contingency planning. One of the common issues is about increasing storage on waste sites, which we are concerned about. As a responsible industry, we must be aware that a broad spectrum of people are involved in the industry. Unfortunately, as the committee will be well aware, waste crime is a big issue for the country and the sector. Our concern is that, if we are not careful, additional storage and extensions to storage could open the door to waste crime. Therefore, rather than permitting storage increases, it might be better to allow planning consent to be more flexible in terms of opening hours and throughput, in order to allow sites to deal with bottlenecks.

My last point might go down like a lead balloon, but landfill capacity is the only flexible option for contingency planning. Stuff that piles up in ports that is spoilt or cannot be recycled can go only to landfill. The sector is not in the business of unnecessarily sending stuff to landfill. That is the last resort: it is the backstop. In 2021, we will be in a tricky position, when the landfill ban comes into force in Scotland, and we cannot send stuff to

landfill. There will be a big question about where it will go.

John Scott: That brings me nicely to my next question.

What preparations have SEPA and others made to provide support to waste operators that are facing disruption? Does SEPA anticipate an increase in waste-related crime in the event of there being no deal? We are now getting down to the nitty-gritty. What will we do with the stuff? As Stephen Freeland said, landfill is the last resort, but it would cost operators money. What are the attendant risks?

Rebecca Walker: As I mentioned, we have been preparing for all outcomes. We have been working closely with operators on communication of the message that environmental laws are not changing and environmental authorisations stand. However, in the event of there being no deal, there could be disruption in Scotland, so we are asking for early dialogue so that we can engage with businesses on their contingency plans.

When it comes to waste crime, we will continue to disrupt and prevent. We are absolutely committed to tackling waste crime and to understanding the risks, threats and harms that it could cause, in the event of no deal.

John Scott: Has SEPA had discussions on that with Police Scotland and other bodies?

Rebecca Walker: Yes—we have done that through the groups that my waste crime colleagues sit on.

Stewart Stevenson: I will go back to the SIs, for clarity about what we are discussing. I think that I heard from SEPA that the rules will remain the same after the change. However, what I heard from Libby Peake was that oversight will reduce. Is it a fair characterisation that although the rules will be the same, environmental groups are concerned that oversight will be reduced?

Libby Peake: With regard specifically to waste legislation, it is right that, as far as we can tell, the SIs have largely been technical, but that is not true across the SIs, many of which have had made major changes.

There are real concerns about governance, going forward. We do not yet know what will replace, across the UK, the functions that the European Commission and the European Court of Justice have served. Those two bodies have been incredibly effective at focusing minds, and at monitoring and setting targets and ensuring that member states meet the targets. About 14 per cent of the notices that have been served against the UK, but almost half of infringement actions have related to environmental matters. Good oversight is incredibly important for environmental

matters because there is no one to speak for the environment.

We are not entirely sure how the functions will be replaced. England has proposed an office for environmental protection to replace them, but it is just for England and will not be as good as the European Court of Justice. It will not be fully independent, because the committee and the budget will be set by the Secretary of State for Environment, Food and Rural Affairs. It will have the ability to start court proceedings but not to issue fines. In terms of environmental principles, ministers will only have to “have regard to” the principles that are set out in a policy statement, and that is really just a tick-box exercise. What England is proposing is not adequate.

It is not yet clear how things will be administered across the UK. Although many environmental matters are devolved, for the past 40-odd years they have been administered through the common framework of the EU, and it is not yet clear what will happen after Brexit in terms of devolution and governance.

Stewart Stevenson: Could Libby Peake tell us in writing the specific rules in respect of which there are issues? The general point about oversight is understood, but I suspect that we might, after the meeting, wish to engage in the issue of the rules in other ways.

The Convener: I agree. We would be very grateful if specific concerns could be put to us in writing.

We will move on to talk about common frameworks.

Finlay Carson (Galloway and West Dumfries) (Con): What would the panel want a common framework on waste to deliver?

Libby Peake: I will make a general observation. Because of the SI process, the work on common frameworks seems to have stalled, although the Government published an additional report saying that it would consult and engage more from March 2019. I find it a bit confusing that waste is split into two different sections, one of which might require a legislative framework and one of which might require a non-legislative framework. I am not clear why that distinction has been made, especially as there are some instances, at an EU level, of the different bits of legislation that are being split having been designed to work together. The waste electrical and electronic equipment directive is in one category and the restriction of hazardous substances is in another category, but those two things should be working together. We would like to see a lot more explanation and a lot more action from the devolved Administrations and the UK Government.

Rebecca Walker: We are aware of common frameworks, and, in our capacity as the environment protection agency, we would provide any technical advice and expertise that was required by the Scottish Government on the practical implementation of regulations and legislation.

Finlay Carson: Let us go back to Libby Peake's comments. When it comes to the common frameworks, in what circumstances would a non-legislative approach be more appropriate than having legislation? In the example that you gave, you suggested that a divergence may not be appropriate, but are there areas where that would be appropriate?

Libby Peake: I would like to see a lot more explanation by the UK Government of what the categories are and of how the Government has decided what goes into which category, because that is not clear to me.

In most instances, it would be good to have some common understanding and common regulations for waste and resources—albeit that the individual Administrations would be free to exceed them—so that everyone would operate on a level playing field, as is the case at the moment with EU legislation. As Iain Gulland said, Scotland has gone further in some instances, and we would want to see that continue.

Finlay Carson: There is already policy divergence in the UK on recycling, landfill targets and aspects of waste regulation. Does that cause trans-boundary problems at the moment?

Stephen Freeland: It potentially will, going forward. I mentioned the landfill ban—waste crime is already an issue. There is no capacity in Scotland to deal with a million tonnes of waste, so that waste will have to go to English landfill sites. Whenever waste is on the move, there is an associated cost increase, and, as soon as there is a cost increase, there is scope for waste crime.

At the moment, the regional differences are broadly workable. At times, it can be a bit frustrating that there are different requirements, but that can be managed like any business risk.

We are all in the same boat on the stalling recycling rates. Our recycling rates are sitting at about 45 or 46 per cent and are not really going up. That is a common issue, which we will all have to address.

Libby Peake: When the landfill ban comes in in Scotland, the expectation is that, because Scotland does not have the capacity to deal with all that waste, it will largely go across the border into England, which could result in an increase in waste crime.

Divergences could easily have an impact. For example, if Scotland or Wales sets a different rate for landfill tax, that will immediately give people an incentive to try to get round the higher landfill tax by sending their waste elsewhere. There could easily be impacts from divergence in policies, which we have not seen to a great extent to date.

Finlay Carson: Will Rebecca Walker say how UK policy divergence is managed at the moment? I am thinking, for example, of the difference in landfill tax rates and so on. How does SEPA engage to manage such issues?

Rebecca Walker: We work closely with our colleagues in the environment agencies in the other UK Administrations.

At the moment, there is no difference in the landfill tax rates. As Stephen Freeland said, there will be a difference when the biodegradable municipal waste ban comes in on 1 January 2021, because the ban is coming in only in Scotland, not in the rest of the UK. We are anticipating what will happen as a result of that, and we are working with colleagues in the other environment agencies to understand where there might be an adverse impact or crime opportunities in relation to the movement of waste. We are working closely with colleagues across the border.

Stewart Stevenson: What engagement do we expect in the development of the common frameworks that will apply across the UK, which will substitute for what happens in Europe? Has consultation with the UK Government, which is driving the work, started? If not, when must it start?

Libby Peake: I heard that wider consultation was meant to start in March. The Government said, in its report, that it was engaging with stakeholders behind the scenes, but we have not been engaged very much, apart from in the initial assessment of what will require common frameworks.

What is happening is not yet clear. The Government promised wider consultation, but, if the standard of the consultations on the SIs is anything to go by, that consultation will not be adequate—the SI consultations have been very cursory. We want much more detailed, extensive and rigorous consultation with stakeholders.

We also want much more involvement with the devolved Administrations. The devolved Administrations have agreed a set of very good principles, but I do not think that those principles have yet been reflected in anything that has resulted from the process.

Stewart Stevenson: How many organisations does the Green Alliance represent? What is your geographical spread?

Libby Peake: The Green Alliance Trust is an independent charity and think tank. The name is slightly misleading in that we are not an alliance although we convene an alliance of 14 major environmental organisations that are responding to Brexit—the greener UK coalition, which includes the RSPB, Greenpeace, Friends of the Earth and the National Trust.

Stewart Stevenson: Are all the organisations in the alliance represented in different jurisdictions?

Libby Peake: I take it that you are referring to geography. The LINK groups in Scotland and Wales are not official members, but we work with them.

10:15

Stewart Stevenson: We have heard that the consultation process has not started and that you do not yet have an indication of when it will start. What about the industry groups? Have you heard about any consultation? The witnesses are shaking their heads—it is just not happening, convener.

The Convener: Let us move on to questions from Claudia Beamish.

Claudia Beamish: I will drill down a bit further into environmental governance and principles. Libby Peake has highlighted issues with the office for environmental protection in England, and the Scottish Government is currently consulting on environmental governance and principles. With regard to waste management, are the broad EU principles being picked up in the Scottish Government's consultation, with the opportunity to shape the future positively?

Rebecca Walker: We have participated in the stakeholder workshops that were organised by the Scottish Government to support the current consultation on environmental principles and governance. We are actively looking at those issues, and that work will go to the agency board at the end of this month. We would be happy to share it with the committee.

Claudia Beamish: What does SEPA see as the key governance functions that are fulfilled at the EU level at the moment, which will need to be transposed?

Rebecca Walker: Our consultation response has not yet been considered by the agency board, but we will be happy to share it with the committee once it has been.

Claudia Beamish: Can any other witnesses highlight the principal EU-level governance issues that will have to be transferred and suggest a positive model for Scotland? The issue is complex. I note what Libby Peake said about the lack of

separation from Government in England and that there is no possibility of setting fines. We can obviously have criminal proceedings for environmental crimes involving waste, but there are other issues such as infraction. It will be helpful to have views on those issues at this stage.

Libby Peake: The monitoring and enforcement will have to be replaced. Scotland will need to have something independent of Government that can take the Government to court and issue fines, and it will ideally work in harmony with, or be part of, the organisation that is proposed for England. Environmental matters do not respect borders, so it is very important that Administrations work together on environmental protection.

Stephen Freeland: We have seen fairly positive signs that high-level principles such as the polluter-pays principle and the precautionary principle will be retained and subsumed into our domestic framework. That is very important.

There might be scope to improve on some of the principles. For example, changing the waste hierarchy so that it is more in line with the circular economy, with a revised resource management hierarchy, would allow some of the models that we have discussed, such as refurbishment, to be reflected better and more strongly. We have heard that, overall, we will not lose any of the high-level principles and that there is no appetite to shun them or water them down.

Claudia Beamish: How might that relate to the possible establishment of courts to replace the EU courts?

Stephen Freeland: That might be quite tricky. Until quite recently, it was hard to get a court to understand the technicalities around waste crime and some of the waste policy issues that we have been dealing with. It is quite a steep learning curve, but it will have to be addressed.

Mark Ruskell: What do you see as a replacement for the European Court of Justice? What would ideally come out of this process? There is a question about who watches the watchers. It is obviously difficult for SEPA to comment on any replacement for the ECJ by which it, too, would be held to account.

Libby Peake: That is a particular challenge. It is difficult to set up in the UK a body that will hold the UK Government to account. That is why, when setting it up, you need to make sure that it is absolutely separate from the Government, that it will not be appointed by the Government and that it will be able to do things such as issue fines.

The Convener: Mark, do you want to move on to other questions about the issue, or are you happy?

Mark Ruskell: I can perhaps ask my supplementary question after Angus MacDonald's question.

Angus MacDonald (Falkirk East) (SNP): Let us turn to funding and other EU support structures. I am keen to hear the panel's views on what the key EU funding streams are for the waste and resource sector in Scotland and on the possible implications of losing those funding streams. I am keen to hear from all the witnesses, but, when Iain Gulland responds, I would like to hear how Zero Waste Scotland is planning for the exit from the EU, particularly given that it is partly funded by the European regional development fund.

Iain Gulland: As you know, we have secured access to ERDF money, which is continuing. A commitment was made that programmes that are already up and running will continue to receive that support up to 2023. Although it has not yet been formalised, we anticipate that that money will still be available to us. We have been using that money, matched with Scottish Government money, to accelerate support for businesses in the circular economy. The money has been critical to that.

We are aware that conversations are being held at the UK level about a follow-on fund—forgive me, but I cannot remember its name—that will be introduced to support that type of project beyond the exit. It might be a proposal for another type of structural funding. The funding has been key to the existing work that we are involved in, so not having access to it will significantly affect our ability to support SMEs, social enterprises and the wider community work that we do in the circular economy.

It is also important to note that the EU is looking at its own funding programmes, such as horizon 2020, the LIFE programme and so on, and is putting considerable amounts of money—hundreds of millions of euros—into those funds, particularly for the circular economy. To back up the point about the package being adopted by Parliament and member states beginning to develop their own programmes, the EU is putting significant funds into those programmes as we speak. Not having access to that funding will, to some extent, put us at a disadvantage in relation to other member states. That is critical to our thinking about where investment will come from.

This is about investment in new infrastructure, new ways of working and new individual and collective business opportunities, as well as supply chains coming together to redesign the use and consumption of materials in a more circular way. This is not about just behavioural change, although that is at the heart of the issue; this is about engaging in new systems and new infrastructure, and having such investment

available to us will be critical. We have a watching brief on the situation.

Sitting beside that is our ability to work in partnership with EU member states or other partners in Europe on some of the projects. We have secured some of those projects in the past, and we would be looking to do the same in the future. We want to work with universities, colleges and other technology institutions across Europe not only to develop our knowledge and skills but to share what we are doing in Scotland. As you can imagine, EU exit is making all of that uncertain, as we just do not know how strongly those relationships and partnerships will be maintained, particularly where EU funding programmes are concerned.

Angus MacDonald: Horizon 2020 is coming to an end and is, I think, going to be replaced with horizon Europe. On our visit to Brussels, we heard how the Norwegian directorate has been quite successful in tapping into horizon 2020. Do you see any difficulties in tapping into horizon Europe, once it is under way?

Iain Gulland: Again, what relationship we have will come down to the type of EU exit that we have. Nevertheless, there are things that we can learn from how Norway has interacted with European funding, and we are actively engaging with other partners and bodies to understand how they have accessed money in the past and how we might access it in the future. We are also talking to and learning from our university partners in Scotland, which are key to the development of the circular economy and which probably have more experience of accessing European funding.

All of that is definitely on the table, but we need to start thinking seriously about the availability of those funds to us, which will depend on the EU exit model that we have. It makes things slightly uncertain when we try to engage with partners on funding and start to build up projects. With European funding, it takes a long time to move from an idea to building up the partnerships that are needed, and there is much uncertainty around the more formal relationships and partnerships that we will have to build in order to access that funding.

Linda Ovens: We are not, on either a public or a private sector basis, an industry that relies hugely on EU funding from day to day. Any investment that is made on a day-to-day basis comes either through the public sector and potential borrowing or through the private sector on a global basis, so EU funding is not something that particularly concerns us. The only exposure that we have to it is the funding from the ERDF through Zero Waste Scotland, but that affects upstream businesses more than traditional waste management.

The Convener: It might have more effect on innovation in the university sector. Although that is another sector, will that not have an impact on your sector, too?

Iain Gulland: Absolutely. Our relationship with universities is about innovation, technology and systems thinking. All of that has been developed over the past couple of years, but it relies, to a certain extent, on investment in research in universities, and that is potentially under threat.

I should also mention the investment that is available through the European Investment Bank, which the European Commission has specifically asked to look at supporting the transition to a circular economy. We are therefore talking about major infrastructure as far as systems thinking is concerned.

Those in the EU are beginning to get their heads around the idea of a circular economy—indeed, the EIB has created a circular economy team, whom we have met. All of those things present potential opportunities for us if we are in the EU. However, if we are not, that is another avenue that will be closed off to us. Most of those who are providing investment opportunities at the EU level are considering, or are being asked by the Commission to consider, the issue of the circular economy, which shows how important it is in shaping the European economy. If we are denied access to that investment, we will have to find the investment by ourselves, whether from central or private sources. In any case, it will put us outside the box to some extent.

The Convener: Angus, is it okay if I bring in Mark Ruskell to ask a brief supplementary question? I will come back to you.

Angus MacDonald: Okay, convener.

Mark Ruskell: I was struck by what Stephen Freeland said about how we are, in effect, flatlining on progress and recycling rates. We are looking at more incineration, and we have an issue with exporting waste for incineration. Where will the next major jump in innovation and technology come from? Will it come from public sector funds that we are discussing or from a combination of public and private sector funds? Will private sector funding of research and development and innovation increase over time, or are we basically building towards more incineration and models that perhaps attract shareholders but are not about creating real innovation and interesting technology that could take us to the next level?

10:30

Stephen Freeland: Recycling and incineration do not conflict. A plant is designed to deal with a certain type of waste at a certain level on the

waste hierarchy. A lot of focus might be given to energy from waste because a large, multimillion-pound investment in equipment is involved, but that is not to suggest that the eye has been taken off the ball when it comes to recycling.

It is clear that there will need to be further investment. A lot of the facilities that have been built in the past eight to 10 years will probably require some upgrading not only because they are reaching that time but because there are a lot of changes in the policy framework that require plants to be upgraded, have a change of specification or have a change of machine.

Mark Ruskell: I am not talking about building things to burn stuff; I am talking about innovation, research, technology that is not yet proven, and either the state or the private sector needing to take a risk. How geared up is the private sector to really invest in transformative technology that will drive up recycling rates and waste minimisation? Can anybody answer that question?

Libby Peake: Throughout the UK, it has been seen for a number of years that incineration or energy from waste infrastructure is the only bankable technology that the private sector has been really willing to invest in on a very large scale. If we want to move away from that sort of model, what is needed is probably more intervention from the state, a much clearer policy framework, and much more certainty for people who might invest that the direction of travel will be sustainable and will continue in the right direction. In that regard, Brexit really does not help because, throughout the waste sector—whether in relation to incineration or anything else—people have been reluctant to invest in large bits of infrastructure or other things to do with waste and resources.

Strategic direction and directed investment in innovation are probably needed, and you really need to set out your stall on where you want to go. To be fair, you have been doing that, but you need to go even further.

Linda Ovens: That is correct. The innovation needs to take place upstream of the waste industry. It needs to take place in the circular economy and in reducing the amount of waste that we deal with.

Angus MacDonald: Earlier, I asked about funding. There are, of course, other EU structures and collaborations that are important to the sector, including data systems and networks of expertise. What impact do you see on those support structures? That could be challenging after Brexit.

Iain Gulland: Others might have a different view from mine. At Zero Waste Scotland, we have spent quite a bit of time developing networks in the rest of the EU and beyond. That is not anything to

do with EU exit, for example; it has simply been part and parcel of understanding what is happening in other parts of Europe, the interpretation of policy and building alliances. I hope that those networks will be maintained; in fact, we have a programme of work to maintain them and the interactions with others.

I have already mentioned our cities and regions work. There is a lot of interest in that work across Europe.

The answer is partly about playing to our strengths—things that we can take out there to share with others, such as our carbon metric—and picking up on what is happening in other parts of the EU. Specifically, if we are out of Europe and EU policy evolves, we will want to understand how it is evolving so that we can adapt.

Those things should be maintained. The difficulty is that we are recognised in the European Commission. We get meetings, for example, and we are part of the landscape, and anything that starts to distance us from that will be quite challenging for relationships. At the end of the day, what is important is people meeting people and talking to them. I hope that that can be maintained. However, as I said, the situation with regard to access to project funding and so on could get quite challenging. A lot of partnerships that we have been involved in have been built from a standing start, beginning with formal engagement with a project before going on to other things.

Rebecca Walker: It is also important to SEPA that we maintain our partnerships and collaboration across Europe and further afield. Learning from others and sharing knowledge is really important. We are a member of the European network of environment protection agencies, and we will continue to be part of it so that we can continue to collaborate, share ideas and understand how we can work together.

The Convener: We have run out of time, but I would like the panel to answer one more question. Because of what happened a few weeks ago, we now have a further six-month period, and the cliff edge is further away. What would you like to happen in the next six months to address some of the issues that you have raised? It is a big question.

Iain Gulland: For us, there is a great deal of uncertainty around waste, recycling and everything else that we have talked about. That is why the ambition for a circular economy is important. We must push for that. It is a no-regrets policy, because it builds in a resilience around all of those issues.

When material prices collapsed in 2008-09, the consequent uncertainty caused a shockwave in terms of waste, movement of materials, recycling

rates and so on that was, in some ways, similar to the one that we are discussing today. We need to build up the idea of a circular economy and invest in the opportunities that our materials provide us with in terms of end-of-use goals and recycling back into the economy but also, more importantly, in terms of the up-front input of material that is required by our economy. Last year, more than 84 per cent of chief executives of manufacturing companies in Scotland said that the main thing that was keeping them awake at night was the volatility in the price of raw materials for their businesses. That is obviously to do with global politics, but we can tackle that here if we think about using our resources in Scotland in a much more circular way. That is at the heart of the issue.

I understand the politics that are involved in terms of EU exit, but, regardless of what happens, we absolutely need a more circular economy, not only to benefit our economy but in order to show that this is the direction of travel that must be taken globally.

Linda Ovens: We need the situation to be resolved as soon as possible. From a public sector point of view, the majority of waste movement is done under public procurement contracts. It is difficult to negotiate those contracts at the moment because we do not know what clauses will be needed in relation to the protection that is required and the risks that we are trying to manage. Pushing the date back six months has not helped at all; it has simply stalled the process of trying to get a level playing field in procurement and commercial territory.

Libby Peake: To widen the discussion out into more environmental matters, I would like this breathing space to be used to review the SI process and identify deficiencies in it, because there certainly are some that could be rectified. Above all, we would like to see the governance gap being addressed by the UK Government and the devolved Administrations, preferably working together, to ensure that, after Brexit, the environment is as protected as the politicians have said that it will be.

The Convener: I thank everyone for their time today. We will suspend the meeting briefly to allow for a change of panel members.

10:39

Meeting suspended.

10:45

On resuming—

The Convener: We continue to take evidence on EU exit and the environment with our second panel, which will focus on chemicals. I am delighted to welcome Michael Warhurst, the executive director of CHEMTrust, who is on the phone. Good morning. Can you hear us?

Michael Warhurst (CHEMTrust): I can hear you, yes.

The Convener: Excellent. We might need to boost your volume a little bit so that we can hear you a bit better.

We are also joined by Silvia Segna, from the REACH executive of the Chemical Industries Association; Tom Shields, the acting chair of chemical sciences Scotland; and Janice Milne, the head of function (energy) for the Scottish Environment Protection Agency. Libby Peake, from the previous session, is with us for this session, too.

I will ask the witnesses a similar question to the one that I asked the previous panel. What are the key risks to the chemicals sector of EU exit?

Tom Shields (Chemical Sciences Scotland): Good morning, everyone. I appreciate the opportunity to say a little bit about chemicals in Scotland. To place things in context, the chemicals industry in Scotland is the second largest manufacturing exporter in the country, exporting some £3.91 billion in chemicals and pharma from Scotland. Of that figure, £3.17 billion—about 80 per cent—goes to the EU, so our exports to the EU are an enormous proportion of our overall international exports. In addition, we import more than 60 per cent of our raw materials from EU countries. Therefore, we have a high dependence on the export of chemicals to Europe and on the import of chemicals, raw materials and intermediates from Europe.

In many cases, the supply chain goes in both directions more than once. For example, we might export an intermediate, which might be processed before coming back to Scotland, here in the UK, and then it might go back to Europe, perhaps as a finished product. A lot of our business will be threatened if there is a problem in that supply chain with materials crossing the border between the UK and Europe.

The principal regulations that control all that traffic are the REACH regulations. Under them, we have spent more than 10 years investing in the registration and approval of chemicals, getting licences and putting in place all the necessary data. Our entire industry has been well focused on that work, and 80 per cent of our exports and imports depend on the REACH regulations

working effectively for us. Anything threatening those regulations—for example, if our REACH registrations were not recognised and we had to go back to re-registering with testing—would result in an enormous disadvantage to the Scottish chemical industry and would threaten the economic contribution that we make to the Scottish economy. Our companies are most concerned about something threatening the very well-organised and heavily invested-in system around the REACH regulations, because anything that threatens that system will threaten us. We are keen to ensure that there are no such problems and that we have that flow of trade. That is probably our highest priority.

Also high up in our priority list is maintaining access to skills and expertise across the European border, because we in Scotland are strong in innovation. Our university sector punches well above its weight in terms of its impact in bringing intellectual property to the market. A lot of that backs up the scientific and technical services that we provide as part of the export drive in Scotland. We depend quite a bit on getting people from Europe who have the appropriate skills to travel here to work and make their careers here. If that is threatened, much of the powerhouse behind innovation in our sector in academia would be threatened.

The Convener: Has there been a drop-off in that since 2016?

Tom Shields: There has been a little drop-off—some people have gone home—but there is a great deal of concern among the academic community about losing people. People are watching the situation carefully and there is a fear about what might happen if we have a hard Brexit or some other Brexit that threatens academia.

One concerning thing that we are finding is that, with applications for European funding for research, our proposals are at something of a disadvantage because of the uncertainty around Brexit. I hear from my academic colleagues that we are finding it more difficult to compete in the European funding market, if you like, for research. That is something real that is happening now.

The Convener: Would anyone else like to answer?

Janice Milne (Scottish Environment Protection Agency): From SEPA's perspective, our role in REACH will actually be strengthened. The Health and Safety Executive, as the UK chemicals agency, will have a statutory duty to take on board SEPA's advice.

Libby Peake: In contrast to waste, which we talked about earlier, with chemicals, some real regulatory problems will come about if there is a no-deal exit. As has been alluded to, the REACH

regime at EU level is one of the most complicated bits of legislation that has ever gone through the EU. It has taken 10 years to amass the database, which is centrally administered in Helsinki and which contains extensive safety dossiers on 21,000 chemicals. In the event of a no-deal Brexit or a Brexit in which we cannot negotiate access to the REACH regime, we will immediately lose all that information. We believe that the SI that has been considered at Westminster is completely inadequate in relation to ensuring that the environment and human health continue to be protected to the same extent as at present in the event of the UK administering its own system.

The Convener: You say that we would “lose all that information”. Has the UK Government not given a commitment to take all that information and, in effect, keep the same standards? Are you not getting a sense that that is happening? Right now, we have access to all that information, so how would we lose it?

Libby Peake: We would lose it, because most of the information is owned by private companies and has been amassed in dossiers with the explicit purpose of registration in the REACH regime. In the event of a no-deal Brexit or if we lose access to REACH, we will immediately lose access to that information, and UK companies will have to get permission from all the other people who have been involved in creating the dossiers to reuse the information. The EU has been effective in bringing together companies that all use a common chemical, which have then jointly been responsible for identifying or providing all the safety information. That will be lost in the UK system. For instance, DEFRA has committed £5.8 million to recreate a database with the purpose of regathering that information but, on exit day, it will be an empty database, and it will have to be repopulated.

The Convener: We raised that issue with the cabinet secretary, Roseanna Cunningham, and she said in a letter to us that

“I consider the likelihood of significant disruption occurring to be low in the short to medium term, and am satisfied that new UK regulatory arrangements will be in place upon exit day that will draw on existing expertise and resources to provide an acceptable level of regulation. In a No Deal Exit, a UK REACH IT system will be put in place by Defra to provide continuity for UK businesses”.

What is your response to that comment from the Scottish cabinet secretary?

Libby Peake: The UK Government has made allowances to ensure that the regime functions on exit day. It is grandfathering and it is recognising the EU data that has already been registered, but we will lose all that information. Although it is possible that the regime will function, the UK Government will not have access to that

information. It will allow companies between six months and two years for notification and then the recreation of those dossiers. Two years is probably not the most realistic timescale. That might sound like quite a lot of time to go without those safety dossiers, but it took 10 years to create them at an EU level and we will need them in a UK system. We will not have that on exit today.

The Convener: I will bring in Silvia Segna, who obviously has chemical expertise.

Silvia Segna (Chemical Industries Association): The decision to extend article 50 and delay Brexit avoided the immediate danger of no deal for the chemical industry. At the same time, it extended uncertainty for business. We need a solution as soon as possible, because the failure to agree a way forward will negatively affect business confidence to invest in the UK, which is a big risk for the chemical sector.

On chemical regulations, we have engaged closely with our members, with Government departments and across the Parliament to address a number of legislative gaps that we have identified. We are pleased that DEFRA is addressing those by updating statutory instruments, such as the REACH etc (Amendment etc) (EU Exit) Regulations 2019. Without that update, many companies would not be able to mitigate the impact of no Brexit or use the transitional measures that the UK Government has designed to put in place.

The Convener: Why are certain organisations and companies not able to access those transitional measures?

Silvia Segna: I will give the example of chemicals registered under REACH that are imported from outside the European Union and registered by the non-European manufacturer through a representative based in the EU27. There were no provisions in the REACH statutory instrument to allow UK companies importing those chemicals to benefit from a transitional arrangement or to notify the Health and Safety Executive within 180 days in order to continue to import in the short term before having to register within two years.

We are pleased that the UK Government has addressed the gaps. At the same time, we are still greatly concerned about REACH and other chemical regulations under no deal. The concerns are specifically to do with timelines and the information-sharing issues, as highlighted by Libby Peake, and how we will minimise the additional costs that many companies will face post-Brexit. The same products will need to be registered, approved and evaluated by EU and UK authorities. We believe that responding to two

separate regimes may turn it into a very complex and expensive process that may weaken competitiveness of the UK chemical industry; that also has the potential to reduce the number of chemicals in the UK market. That is a big risk for the chemical industry.

Stewart Stevenson: I want to understand who owns the intellectual property in the existing European database. I think that I am hearing that the intellectual property ownership continues to reside with those who submitted to the database. Therefore, each of the companies that has submitted to the database is in control of how those data are used hereinafter. Those 10,000—or whatever the number was—submitters would have to provide authority to the UK to continue to use the database. Is my understanding correct? I see heads nodding, so I think that I probably have it correct.

Tom Shields: Yes. I believe that the intellectual property rests with those who submitted the data; they invested in doing the validation and testing and then undertook the registration. That information still resides in the correct ownership.

11:00

I will go back to Libby Peake's evidence. I do not have the same extreme concern about our losing a large volume of data. We in the industry have been reassured on this matter a number of times by Government agencies. Indeed, the convener has already highlighted the cabinet secretary's response, in which she very strongly makes the point that the chance of disruption on day 1 is low and in which she says that she is

"satisfied that UK regulatory arrangements will be in place upon exit day".

I take that comment in the spirit that it was made, but I think that we all have experience of large and complex information technology systems that, when swapped on to duplicate systems, did not work at all. The banks have had that kind of problem, and the national health service and all sorts of organisations have had problems with changing over from a large and complex IT system, say for example EU REACH IT, and replicating it with, say, UK REACH IT.

We remain reassured by the agencies and the Government that all will be well should there be a no-deal Brexit—you took some evidence from the HSE on that back in December—but I am somewhat concerned that we are talking about a really big and complex system and an IT-based thing. I know that you will shortly meet the Cabinet Secretary for Environment, Climate Change and Land Reform. I would like to understand what risk assessment has been undertaken to arrive at the opinion that the risk of disruption is low and to be

satisfied with the UK systems that will be put in place. I would advise the committee to look a bit more at how that judgment has been made, the evidence on which it is based, the risk assessment that has been undertaken, whether that risk has been quantified or qualified or whether it is simply opinion. Is there any substantiation of the view that the risk of significant disruption is low?

The Convener: That is helpful. I have not asked Michael Warhurst to come in yet. Would you like to do so, Mr Warhurst?

Michael Warhurst: Yes please, convener. CHEMTrust is a charity that focuses exclusively on chemicals policy, particularly at EU level but also in the UK, and tries to ensure that humans and wildlife are well protected. The key issue is that the database that will be created by the UK in the event of no deal and if we are outside REACH will be empty—it will just be sitting there without any information in it—whereas the REACH database, which is the best in the world, contains huge amounts of information. It took quite a few years to develop the database software, and then it took more than 10 years to get the data into it.

There is a big difference between an empty database and a full one, and the worry is that the UK will put in place a system that appears to be a copy of the EU's system but without any of the information. There would be a very gradual phase-in of data and there is a lot of concern about how much data industry would have to supply and how much it would cost. You would still end up with a system that did not contain the same amount of information—it would be almost a shadow; a ghost or a virtual system. It might look like the EU system but, in reality, it would have something very different going on inside it.

Chemicals policy is very difficult. There are tens of thousands of chemicals in millions of different products; keeping a hold on all of that is very difficult and is why it has taken so long for any jurisdiction to make good progress on the matter. The EU might be the strongest in this area, but it is not in any way perfect. That is a challenge. The complex system that the EU has put in place is constantly developing, with new analyses being undertaken, new data coming in and new decisions coming out, but the UK has made no commitment to follow those decisions. The EU might look at this or that chemical and decide to restrict its use in, say, till receipts, but the UK has made no commitment to copy such a decision. The issue, therefore, is not just the lack of data in the UK database, but the fact that the UK has not said that it will copy the EU's decisions.

Another point that is worth mentioning is that the EU system is quite open, in that there are many different meetings and management boards where there are people around the table from not only

the member states, but industry, environmental and consumer groups, and unions. They can all input into the discussion and say, "Have you considered this research or this use?" Generally, all the stakeholders are pretty happy with that. In the European Union (Withdrawal) Act 2018, the UK has said that it will transfer everything from EU law into UK law and remove the bits that are not operable. It has said that all those committees are not operable, because we do not have member states in the UK, so everything will be put inside the HSE and the stakeholder functions will be got rid of. We are moving from quite an open system to a very closed system. CHEMTrust said to DEFRA that although there are not member states in the UK, there are devolved Administrations, and we suggested that committee structures could be created that would allow representation of devolved Administrations and stakeholders. DEFRA did not take that up, though, so all the functions are basically being subsumed into the HSE, with some role for the secretary of state in London. A very closed system is being created that pretends to be a copy of the EU system but is not.

The Convener: Mark Ruskell has some questions on that broad theme.

Mark Ruskell: I want to follow up on what that means for research. There will be a database, but, as I think several people have said, not everything will be in it, or certainly not from day 1, and it may take several years before it might become useful for research. What will happen during that period? Are there concerns that research might go elsewhere in the EU, for example if there is a more comprehensive system in Germany? Is there concern about where the research effort will move to in Europe as a result of Brexit?

Michael Warhurst: The EU system is open to academic research coming in from other places—it is not just about European research, however you define European.

The EU funds quite big projects that look at specific issues. For example, there is a collaborative project across Europe on human biomonitoring that looks at the level of chemicals in our blood and other tissues. There is also a set of projects looking at how mixtures of chemicals affect us. At the moment, there are UK partners in those projects and, as with all EU funding, there are uncertainties about what will happen after Brexit.

One important point is that the EU is an important funder of research in this area, and the risk is that the UK will start to drift out of that funding. Access to the REACH database is not easy for academics in Europe anyway. Governments have access, but even they have to be quite cautious about what they do—they have

to sign contracts and have special security measures.

Funding is more important in terms of the research around Europe. The database is accessible to researchers, but even that is quite restricted.

Mark Ruskell: What about the private sector?

Tom Shields: I want to respond to your previous point. The REACH database is not primarily about research; it is about regulation and safety, ensuring that we are using chemicals in an acceptable way and that they are being controlled. There is a bit of research being informed by that, but most research would not put its important data on to a public system like that. I therefore have less concern about the data and a lot of concern about the skills involved in creating the intellectual property in the first place.

Libby Peake: The impact that will be seen in the transition period will be less to do with research and more to do with the private sector having to refund tests or pay to get access to the safety information. It might have to reconduct tests, potentially testing on animals, in order to populate the database.

Mark Ruskell: Is that a significant concern?

Silvia Segna: Yes, that concern is shared by our member companies. Companies in the European Union jointly developed the information on the intrinsic properties of chemicals and the risks that they pose. There has been more than 10 years of compliance with REACH but, with Brexit, companies will have to renegotiate access to that information, which, in future, will be submitted to the UK authority. Our members are concerned that they might not always be able to obtain all the data that they need from all the data owners and that, ultimately, their dossier might contain less information than the EU equivalent. In principle, that would mean that it would not be possible to adequately assess the risk of substances, unless the industry were to duplicate testing, which would come with additional costs and might include the repetition of animal testing.

Mark Ruskell: What kind of animal testing are we talking about? What products would need to be tested?

Silvia Segna: A number of testing methodologies are required in REACH, based on the hazard properties of the chemicals that must be looked at. They could be tested on rabbits and mice.

Mark Ruskell: What kind of chemicals are we talking about?

Silvia Segna: All industrial chemicals must comply with REACH. The industry had to develop

information on the properties based on the tonnage. The higher the tonnage, the stricter the information requirements.

Tom Shields: The message is very clear: if we get into a situation in which we do not have access to large chunks of data, it will be disastrous for our operations, because we will have to revalidate and retest and duplicate the work that has been done over the past 10 years. That would put the Scottish chemicals industry at an enormous disadvantage, and we must not get to that position.

It remains the case that, if we have done testing and research and created some data, that data belongs to us and will be in the system, but a complicating factor is the fact that a lot of materials go to EU countries and then come back, and that might happen more than once. We have worked in an integrated way with the European supply chain and we have all used REACH. If something disrupts that, it will become very difficult to continue business in the way in which it has been carried out in the past.

The Convener: Finlay Carson has a supplementary.

Finlay Carson: Given the evidence and what you have said, how likely is it that we will have to create our own REACH, rather than come to an agreement with our previous partners to use the European REACH? On a scale of one to 10, how likely are we to go one way or t'other, given what we have heard?

The Convener: I will bring in Michael Warhurst.

Michael Warhurst: The UK will remain in REACH in any transition period and for the duration of the current extension. The question is what the UK will need to do to stay in REACH afterwards. Our analysis, which is based on what happened with Switzerland, which also considered becoming part of REACH, is that the UK would need to pledge to follow all the decisions of the European Chemicals Agency. Like Norway, we might get to participate in those decisions, but we would not get to vote. We would also need to accept the ECJ or, potentially, the Court of Justice of the European Free Trade Association States, and we would need to keep in place quite a wide range of other chemical-related laws that help to ensure that REACH works properly.

Our assessment is that there is a chance that the UK could remain in REACH in that way. That is part of the dynamic alignment discussion that has been going on with Labour and the Government at UK level. That could happen, but it will not happen by default. It will not happen unless the UK is prepared to make clear, legally binding commitments to the EU. Even then, the EU will have to decide that REACH is—as we

would argue—important for public health and the environment, and therefore should be dealt with outside any debates about cherry picking the single market.

We think that it is possible that the UK could stay in REACH, but the likelihood of that is only about six out of 10, because the UK must really commit. At the moment the noise is around things like dynamic alignment and staying in line with the EU law and statements tend to move backwards and forwards a lot and to be quite vague, whereas, essentially, staying in REACH would require a legally binding treaty.

11:15

Tom Shields: The likelihood is much higher than six out of 10. I would put it closer to eight or nine, because it is in everyone's interest to cooperate on the matter, especially the large chemical companies around Europe, and we all depend on each other in this very complicated supply chain. I am much more hopeful that we will get a positive outcome, but it will require some leadership from the UK Government.

Libby Peake: It is probably worth pointing out that it remains UK Government policy to try to get access to the REACH regime through associate membership of the European Chemicals Agency. The ministers who introduced the SI in both the House of Commons and the House of Lords reconfirmed that. However, as has been alluded to, it is not just up to us. In the event of a no-deal exit we would lose access, but if we were able to meet the conditions that the European Union might put on it, it would be in everyone's interests for the UK to remain a member of REACH.

Mark Ruskell: I have a little question about trade deal negotiations. Do you have any concerns around the pressure that countries outside the EU that seek a trade deal with UK might put on us to change our regulatory approach?

The Convener: Who would like to tackle that?

Tom Shields: I do not think that Mr Trump likes REACH, but remember that the issue relates to 20 per cent of our business in terms of exports, rather than the 80 per cent with Europe, so the impact will not be enormous.

Libby Peake: There are two issues: whether UK manufacturers will have to meet the standards, and whether imports will undercut UK manufacturers. There is always a risk with environmental protections: if we have the sort of trade deal that favours a US-style approach, that could undercut UK producers and expose people and the environment to dangerous chemicals.

I note that the UK does not have a good track record of monitoring the sorts of chemicals that are placed on the market but should not be. Michael Warhurst from CHEMTrust may be able to come in on this point, but there is a system in the EU called the rapid alert system for dangerous non-food products—RAPEX—into which CHEMTrust has done some research. It has found that the UK is not very active in monitoring what is placed on the market. At the moment, we benefit from notifications from member states, which, if they find that a product is placed on the market that does not meet the regulations, can notify all the other member states, and that product can be taken off the market. We are going to lose that system and, given our track record, we will not pick up all that work in an independent system.

Michael Warhurst: On the issue of public safety, we have to remember that chemicals are incorporated into almost everything. If you buy a toy in a market, that product will contain chemicals, and unfortunately, the research shows that a lot of toys that are imported into the EU from places such as China contain banned chemicals, which can leach from them.

In the UK, CHEMTrust did a big survey of councils using freedom of information and discovered that many councils are not spending any money on checking what markets and shops in their area are selling with regard to chemicals. It is a serious issue on which the UK is not doing a good job at the moment.

The US has been mentioned, but documents produced in India show that Indian companies are telling the Indian Government what they want out of trade deals, and they are complaining a lot about REACH. It is clear that there would be pressure from around the world against the UK using REACH—pressure that the UK would have to withstand. As has been said, the EU is a much more important trading partner.

Angus MacDonald: Michael Warhurst mentioned the situation with regard to Switzerland and REACH. We often hear about Norway's relationship with the EU, but we seldom hear about how Switzerland deals with the EU. For the record, can you repeat what you said about the arrangement between Switzerland and REACH?

Michael Warhurst: Switzerland has some strong relationships with the EU in some areas. For example, with regard to aviation, there is a process whereby the Swiss create their rules and participate in a joint committee with the EU, and the EU basically allows the Swiss full flying rights only if they obey the EU rules. The Swiss appear to have sovereignty with regard to aviation but, actually, they do not, because they have to do what the EU tells them to do.

On chemicals, some years ago, the Swiss explored the idea of joining REACH, but in the end they would not accept the conditions that the EU set, which involved following European Court of Justice decisions; following EU decisions without a vote, although with the possibility of participation in discussions; and keeping to other EU law. The Swiss copy quite a lot of the chemicals law, but they are not actually part of REACH, because they were not able to take part in decisions. Basically, the Swiss have a large number of agreements with the EU that, to some extent, exist independently. They are constantly in joint committees with the EU in which the EU says, "Sorry, but you need to change your rules." There was a big blow-up a few years ago about free movement, because the Swiss are in the Schengen zone as well as having free movement in the EU. The arrangement with Switzerland is complicated, but, in the case of chemicals, they do not fully collaborate.

Silvia Segna: One exception with regard to the relationship between Switzerland and the EU in terms of chemicals involves biocides and the biocidal products regulation. There is a bilateral agreement—a mutual recognition agreement—that allows the Swiss regulator and companies to participate in the implementation of the BPR. We would welcome a similar arrangement between the UK and the EU in the future.

John Scott: With regard to a no-deal scenario, the REACH EU exit regulations have already been amended to extend transitional arrangement periods and are now being amended again to address further industry concerns about disruption to supply chains. Do you have outstanding concerns about the regulations, or are you confident that, leaving aside the database issues, the problems have now been addressed?

Michael Warhurst: There is an issue around the decision-making process, which concerns the transparency of the process and the extent to which EU decisions are taken up by the UK. The UK will rapidly move out of alignment with the EU if it does not commit to copying EU decisions. That will mean that you will start to see chemicals that are banned in the EU but not banned in the UK, and chemicals that are labelled as carcinogens there but not here. That will happen immediately. You can argue that that should not be in the legislation because it concerns a policy decision, but we want the Government to say, in the next month, that its position is that it will continue to follow exactly what the EU does with regard to chemicals, otherwise we will have a quite rapid divergence and are quite likely to end up with a more deregulated system quite soon.

Libby Peake: Our main concern to do with the statutory instrument is that, as Michael Warhurst suggested, the original REACH instrument, as set

out by the EU, mandated that committees be set up to help to provide oversight and ensure well-informed decision making. Three committees were suggested: the committee on socioeconomic risk; the committee on socioeconomic impact and risk assessment; and the member state committee, which would resolve differences of opinion. All those allow for stakeholder engagement, so people from environmental groups, industry, unions and so on can contribute to the decision-making process. That is a transparent way of proceeding, and would ensure that decisions were made on a well-informed basis. That provision has been omitted entirely from the instrument that we are discussing today, and there is no promise to replace the arrangements in a UK system. What has replaced them is a duty on the Health and Safety Executive, which is the UK competent authority, to seek advice from one or more competent people. That is a very closed system that is vulnerable to mistakes being made and which is not well informed by the various stakeholders.

We would like the instrument to be amended so that the committees are reproduced. We are not saying that all member states should be on those committees, which is what DEFRA said. We are saying that we should have expert committees to make sure that transparent and well-informed decisions are made.

Not mentioned in the instrument are the related budget and capacity issues. The UK Government has confirmed that the HSE will be the competent authority. It has estimated that the HSE will need a budget of about £13 million a year, with 35 to 40 extra staff. Given the fact that the UK will have to regulate just about as many chemicals as the EU does, we do not think that that is sufficient. The EU budget for the past 10 years has been €100 million a year, and it has 600 statutory members of staff. The UK will be attempting to replicate the EU system at a cut-rate price, which will be damaging to the environment and to human health.

Tom Shields: I have a concern about divergence as time goes on. I do not think that it will happen in the very short term, but, if we separate, we will have the situation that Michael Warhurst described, where the validations and testing that go on in the European chemical scene will diverge from what we are doing here in the UK. A difference in standards will build up, which will be a barrier. The only other way that that could go is for the UK to follow completely everything that is happening in Europe, but without having any influence on it. In contrast, at the moment, as far as European directives are concerned, we have quite a bit of influence over chemical legislation. Should we separate, I have a concern about divergence occurring in the medium and longer term.

John Scott: We have heard concerns about the instrument being incomplete. What are your views on the readiness and capacity of the Health and Safety Executive to deliver on a UK REACH in the case of no deal? Libby Peake made it clear that she has huge concerns. Do you share those concerns?

Tom Shields: I do have large concerns; I am very concerned about having two IT systems, with one being a duplicate of the other. It is a complicated system that has been built up over a decade. I have concern that it will be difficult for the HSE to be up and running from day 1 and to do everything in the seamless, bumpy way in which things are done now. I am not convinced that the HSE is entirely ready for that. I was hoping that the memorandum of understanding that has been mentioned might shed light on the situation. Again, I encourage the committee to talk to the cabinet secretaries about how ready the HSE really is when it comes to handling a no-deal Brexit from day 1.

John Scott: We have had reassurances from our cabinet secretary, and representatives from the HSE appeared before the committee some time ago to assure us that they were ready. Your concern seems to be a question of functionality and whether the computers are able to talk to each other; it is not about a lack of awareness of the problems or an inability to deal with them.

Tom Shields: I agree, but it is not just about the computers; it is about how the whole system operates as a process.

I have no doubt that everyone is aware of the concern and that they will do their best to deal with it. However, I have not seen evidence of a rigorous risk analysis being undertaken, with substantial evidence that the HSE and the authorities are ready for a no-deal situation. I encourage the committee to try and probe that on 30 April.

Silvia Segna: I agree that it is unclear how, post-Brexit, decisions on chemicals will be made in the UK. Although the UK will not be using the scientific committees, we believe that transparency, independence and a range of expertise and stakeholder engagement will still be necessary as part of the decision-making process. We would welcome more clarity about that.

11:30

The cost of compliance with future UK regulations is another concern. Concern about fees has been raised with the CIA recently; statutory instruments will convert EU fee regulations into UK legislation, and the fees that will be transposed into UK law will not reflect the market size.

John Scott: As businesses prepare for a potential change from EU REACH to a UK system, are there particular challenges for certain businesses? Are SMEs less well prepared than multinationals, for example?

Tom Shields: Yes. SMEs are not well prepared. Plenty of workshops and awareness sessions about preparation have been provided; events for SMEs have been run by Scottish Government agencies such as Scottish Enterprise and Scottish Development International, and there is a website and campaign about being ready for Brexit. However, the hundreds of SMEs in the chemical sector are usually very small and run by a few talented individuals who are really busy. They are all aware of the issue, but the pressure of running a small business, surviving and prospering takes precedence because it is more urgent. SMEs are a large part of the chemical sector, and I am concerned that they are not well prepared for a hard Brexit.

John Scott: How would that lack of preparedness manifest itself? What are the risks to the Scottish population? Are there such risks?

Tom Shields: The risk that I am concerned about is that SMEs would go out of business fairly quickly because they are unprepared and depend on supply chains in which delays or interruptions means that delivery does not happen in the timescale that is needed. It is easy for a small business with a tight cash flow to become insolvent very quickly. I am concerned for the success of those businesses in such a situation.

John Scott: Are they aware of the risk to their operations?

Tom Shields: Yes, they are.

John Scott: But you seem to be saying that they are not, or they would be doing something about it. What is to be done? We do not want to see companies go out of business.

Tom Shields: I would encourage the campaign about Brexit readiness to continue. The real message is that we do not want a hard Brexit; we do not want to get into a situation with that scale of disruption to the supply chain.

Finlay Carson: We heard earlier that Libby Peake has issues with the common framework and how it has progressed with regards to waste. What do stakeholders think about the process to develop a common framework across the UK, and what does it need to deliver?

Silvia Segna: We would prefer to have no divergence between the devolved Administrations on REACH and general chemical regulations, because that would have the potential to fragment the UK internal market and make compliance more challenging for companies. As far as

possible, decisions should be UK-wide to avoid trade barriers. Today, chemical regulations operate UK-wide, and we hope that that will continue.

Michael Warhurst: That is an issue to an extent, because chemicals are so centralised in the EU. That was deliberate, as that was viewed as the best approach and meant that individual member states could do less by themselves. People can now argue for UK centralisation and say that nothing can be done in Scotland, for example, but Scotland already has more commitment to continued alignment with EU environmental law than there is at the UK level, where the situation is much more confused. People can make strong arguments for the idea that, if Scotland wants to carry on being aligned with EU laws, maybe it should be able to be. However, it is clear that that will disrupt markets.

That takes us to some of the fundamental issues around Brexit and what the UK is trying to do on environmental policy. We are talking about an important environmental policy. If the UK does not want to follow EU developments in the area, what is the rationale for that? If Scotland wants to follow them, why should it not be able to? The problem is that we end up getting into very big issues to do with how environment policy is dealt with in general. Obviously, Scotland has a lot of powers in the area. There is not a simple answer, but there will be a big challenge.

I disagree with Tom Shields, who said that divergence would not happen quite fast, because so many decisions are being made. I have heard a speaker from the Health and Safety Executive say that he would expect divergence to happen quite fast.

Whether the UK will pledge to have the same controls and the same safety measures that the EU has or whether it will diverge, and whether Scotland will agree with that, are fundamental questions.

Tom Shields: The question was about a common framework. I think that the chemical industry would want to see a common UK framework for dealing with those issues and would want it to be as integrated as possible. I understand that there are issues and that there is a letter from the cabinet secretary about devolution and the apparent inconsistencies in the discussion on that so far. We really need to get a common framework resolved so that we have as seamless a move forward as we possibly can in the UK.

The Convener: I presume that that would involve maintaining the standards that already exist and the protocols that exist with REACH.

Tom Shields: Yes. We wish the approach to be in common with REACH, as far as that is humanly possible.

Stewart Stevenson: Is engagement in the development of the common framework taking place, or is the situation in that respect as it is with waste? The silence is revealing. There are shaking heads, convener: I think that that is the answer.

Tom Shields: CSS has not been involved in any significant engagement on a common framework. We are pretty much in the dark on that issue.

Janice Milne: SEPA has not been involved in that. We have focused very much on building our existing relationships with the environment agencies, because while the Health and Safety Executive, as the UK chemicals agency, is required to take on board SEPA's advice, we do that through the Environment Agency. We have good working relationships, but we need to enhance them, so our focus has been on further collaboration rather than on the frameworks. Obviously, however, if the Scottish Government asked for our technical input as the regulator, we would give it that.

John Scott: Will Mr Shields answer a quick technical question? Does Mrs May's proposed deal cover the REACH arrangements? If her proposed deal were to be passed, would it allow them to continue?

Tom Shields: I understand that the deal would allow that on day 1, but there is still concern about divergence in the longer term.

John Scott: If the deal were to be accepted, would the immediate concerns be avoided?

Tom Shields: I think that they would.

Libby Peake: The REACH regime would have to be part of the future relationship agreement. It is not explicitly addressed in May's deal. That would have to be agreed, and the UK would have to negotiate access to the REACH regime, if it wanted to continue with it.

Stewart Stevenson: For clarity, this is not about the deal, but about the transition period, is it not? I do not have the political agreement in front of me. Am I correct that that is where the matter will be dealt with, rather than in the deal?

Libby Peake: Yes.

Michael Warhurst: That is correct. The political agreement includes the UK's desire to have a relationship, but it makes no commitments on the EU side.

Mark Ruskell: I want to follow up briefly the point that was made by SEPA about stakeholder engagement. What is SEPA's role in that? There

is concern about loss of such engagement from the current regime. Is there a way in which SEPA could facilitate that in Scotland—say, by bringing together a lot of the non-governmental organisations, unions and others with interests and allowing them to reach a view that could then be fed in to the HSE?

Janice Milne: If officials want us to do that, we will take the suggestion on board. As part of our contingency planning, we have been encouraging businesses to speak to us about challenges that they see. We are quite clear that we expect a high standard of environmental performance, and we also feed our expertise into the Environment Agency's chemical assessment unit in order to help it to provide advice to the Health and Safety Executive. We have mechanisms by which we engage, but as I said, if you want us to look at your suggestion, we can do so.

Mark Ruskell: That would be useful.

With regard to the EU governance gap, can you outline the EU's functions in relation to policy and regulation, and what the gaps might be, following exit? What are the main things that you are concerned about losing?

The Convener: Does Michael Warhurst want to come in first, since we have a bit of silence?

Tom Shields: For me, it is all about REACH, the trading relationship and ensuring that we can continue to export and import without disruption, which is the main aim, as far as I am concerned.

There are a couple of other legislative matters, including on persistent pollutants—mercury and so forth—that have been mentioned in some of the paperwork, but only a small number of companies in Scotland are involved in such business areas. REACH covers everyone, so the priority for us is the policy that is associated with it.

Michael Warhurst: There are other chemical-related regimes that are not part of REACH. However, if REACH says that a particular chemical is a carcinogen, that will influence regimes that are related to cosmetics, for example, or to chemicals in toys. There is also the water framework directive on water pollution, and laws on industrial accidents and industrial emissions to consider. It is not just about REACH, which is in some ways the most straightforward indicator of the problem: we are dealing with a wide range of laws that relate to chemicals, which have different issues attached to them.

Across various directorates-general in the European Commission—DG ENV, DG GROW and DG SANTE—quite a lot of people are working on different aspects of chemicals and pollution. All those processes and policies are important, too.

The situation is quite a lot more complicated than simply being about REACH.

Libby Peake: My general concerns about governance remain, but I think that there are additional concerns—particularly about REACH, with regard to the capacity and expertise that will be required if the UK suddenly has to start assessing safety information and safety dossiers on its own. We have lost a lot of the institutional memory that was around when HSE was involved in setting up REACH. Some people are being recruited to take over those functions, but we do not think that the level of staffing will be adequate to the task.

Mark Ruskell: What about wider governance issues? The ECJ has been mentioned. Do the same concerns arise in relation to chemicals?

Michael Warhurst: I would say that they do. There is the regulatory system, and there is how that system is enforced. As has been mentioned, there is a lack of enforcement now with regard to chemicals in products that are coming into the country. The questions how the whole system is enforced and whether, if we do not have the ECJ or the Commission sitting there, there will be a body that can tell the Government that the system is not being implemented properly, also relate to chemicals.

11:45

My biggest worry is that the UK will end up with a system that looks as though it is doing something but which, in reality, does not do much. That system might not have many staff, who would need to deal with thousands and thousands of chemicals, and who might be mainly involved in talking to industry about grandfathering registration procedures rather than doing much in terms of controlling chemicals. Legally, we would be able to say that the system was carrying out its basic function, but they would not be operating in line with what the law is supposed to achieve. That is the sort of thing that a court process or an uber-regulator could perhaps deal with. Otherwise, we will end up with a system that is, in essence, empty.

Tom Shields: On wider governance issues, the EU emissions trading system relates to greenhouse gases and the associated taxes and regulations. Our industry currently generates quite a lot of power, and is part of the EU ETS. If we separate from that system, how will we proceed in that respect? The EU ETS applies only to some industries: it applies to the process and energy generation industries, but not to the transport and agriculture industries, which are also large emitters. We are concerned about governance in relation to greenhouse gas emissions.

Claudia Beamish: I will continue the line of questioning that Mark Ruskell started. Have the issues around the principles of environmental governance been picked up by the Scottish Government consultation on the subject? What would you like to see, specifically in Scotland, in relation to monitoring, enforcement or courts? Do you have views at this stage, either in relation to your industry or more widely?

Tom Shields: We would like more visibility of what is likely, because we are not getting that. It is pretty difficult to see where, when we separate, we will go in a number of areas, and what the future will hold. We do not know whether there will be tighter governance and more restrictions, or whether we will have more influence than we had when we were in the EU. That is not clear, so a framework that could help us to see what is coming would be helpful.

Claudia Beamish: Are you able to feed in those concerns to the Scottish Government consultation? Being an optimist, I hope that that will clarify things.

Tom Shields: We are able to do that, but I see no clarity about what the outcome might be.

Silvia Segna: The Chemical Industries Association will respond to the consultation in due course. The CIA advocates a continued joined-up approach being taken among the devolved Administrations to upholding environmental law. On governance, we have already expressed support, in principle, for an oversight body in England to ensure that environmental protection is upheld. We would want such a public body to be given autonomy openly to provide views—negative or positive—so that it could be truly effective in upholding environmental law. In our view, consideration should be given to whether having one oversight body for the UK would be more appropriate for providing more effective environmental protection, in terms of resources and decision making. However, we will share our views in more detail through the consultation.

Libby Peake: The consultation seems to be quite open ended, and there has not yet been a firm commitment to replicate, in the watchdog, governance functions that are administered at EU level. We would like to see concrete proposals on how those functions will be replaced in Scotland and the rest of the UK.

Angus MacDonald: I turn to funding and other EU support structures. The committee's consideration of the REACH SI first highlighted to us the significance of the centralised ECHA databases and registration systems. We know that—as Libby Peake mentioned earlier—the ECHA has a management committee and numerous technical committees, and that

stakeholders from industry, NGOs and trade unions are permitted to participate in meetings. What other EU support functions are important for chemicals regulation, and how can they be maintained or replicated after EU exit?

Michael Warhurst: The European Environment Agency has members that are not EU member states. We have heard no clear position on whether the UK Government wishes to stay in the agency. The EEA carries out studies and produces reports on chemicals issues, so it is part of the general debate on chemicals policy and general information finding. It is another important agency.

Tom Shields: We input to a number of European committees that are involved in creating directives on manufacture of equipment and on processes. Although that is not directly an environmental issue, it affects the environment—for example, there are effects when process equipment is being run. We would like to understand what our input will be on that kind of issue. Will we go back to having UK standards or will we continue to participate in a Europe-wide and more international approach? Clearly, we would like to do the latter. That is another matter that is not yet entirely clear.

Angus MacDonald: On funding streams for the chemicals sector, can you give us an idea of how chemicals research and innovation in Scotland might be impacted? I raised with the previous panel the horizon 2020 programme and the planned horizon Europe programme. I mentioned that we heard, when we spoke with the Norwegian directorate in Brussels, that Norway has tapped into horizon 2020 fairly successfully. If, for example, we had the Norway model, do you see our being able to tap into that funding as successfully as the Norwegians have?

Tom Shields: I would certainly aspire to that. Scotland has benefited enormously from membership of the EU, as part of the UK, through programmes such as horizon 2020. A lot of development in the process industry and the energy industry has come through that. The programme has helped to drive academic innovation in our universities and is a mainstay of their consideration of funding. We are concerned about being able to tap into that in the future through some sort of Norway-type deal. In general, the Scandinavian countries, which are small countries, have been effective at getting funding for their innovation and research.

We want to continue to be able to tap into European funding. As I said, I am a bit concerned about our competitiveness when we put in funding bids. There are already signs that we are being disadvantaged by the uncertainty around Brexit. The programmes are important for our academic

development in the sector, so we must get to the point at which we can still access the international funds.

The Convener: I thank the panel members for their time and for all the evidence that they have given us.

That concludes the public part of our meeting today. At our next meeting, on 30 April, the committee will hear from the Cabinet Secretary for Environment, Climate Change and Land Reform, and from the Cabinet Secretary for Government Business and Constitutional Relations, on EU exit and the environment. The committee will also consider the Carbon Accounting Scheme (Scotland) Amendment Regulations 2019 and the Loch Carron Marine Conservation Order 2019.

As previously agreed, we move into private session, so I request that the gallery be vacated.

11:55

Meeting continued in private until 12:46.

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