



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Environment, Climate Change and Land Reform Committee

**Tuesday 30 April 2019**

**Session 5**



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**Tuesday 30 April 2019**

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**ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE**  
**13<sup>th</sup> 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:**

Katriona Carmichael (Scottish Government)

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

Don McGillivray (Scottish Government)

Andrew Mortimer (Scottish Government)

Professor Colin Reid (University of Dundee)

Michael Russell (Cabinet Secretary for Government Business and Constitutional Relations)

Dr Tom Russon (Scottish Government)

**CLERK TO THE COMMITTEE**

Lynn Tullis (Clerk)

**LOCATION**

The Robert Burns Room (CR1)



## Scottish Parliament

### Environment, Climate Change and Land Reform Committee

*Tuesday 30 April 2019*

*[The Convener opened the meeting at 09:39]*

#### Subordinate Legislation

#### Carbon Accounting Scheme (Scotland) Amendment Regulations 2019 (SSI 2019/121)

**The Convener (Gillian Martin):** Welcome to the Environment, Climate Change and Land Reform Committee's 13th meeting in 2019. I remind everyone to switch off their mobile phones or to put them in silent mode, because they might affect the broadcasting system.

Under agenda item 1 the committee will take evidence on the Carbon Accounting Scheme (Scotland) Amendment Regulations 2019. I am delighted to welcome Dr Tom Russon, who is the legislation team leader in the Scottish Government's decarbonisation division, and Andrew Mortimer, who is a statistician in the office of the chief economic adviser. Good morning to you both.

Am I correct in thinking that you will make an opening statement?

**Dr Tom Russon (Scottish Government):** I have not been advised to do so, but I am happy to speak briefly to the purpose of the Scottish statutory instrument, if that would be helpful to the committee.

**The Convener:** Yes—that would be good. Thank you.

**Dr Russon:** The instrument is one in a fairly long series—I am sure that members remember the previous iterations; I will leave you to decide whether you do so fondly—of Scottish statutory instruments on reporting on annual targets under the Climate Change (Scotland) 2009 Act.

All the emissions reduction targets under the 2009 act are based on emissions that have been adjusted to account for operation in Scotland of the European Union emissions trading system. The adjustment forms part of the statutory reporting requirements on the targets, and the calculation rules by which the adjustment is performed each year need to be set in legislation. That happens through carbon accounting scheme regulations.

The original set of regulations—the Carbon Accounting Scheme (Scotland) Regulations 2010—which were passed shortly after the 2009 act, contained provisions to undertake the adjustment calculations for the annual target years 2010 to 2012, which corresponded to phase 2 of operation of the EU emissions trading system. During phase 3 of the ETS—all the annual target years from 2013 to date—amendment regulations have been required annually in order to introduce a new set of calculation rules for each year's adjustment calculation. Annual SSIs have been needed because data for the new EU ETS is available only year to year: we cannot pre-empt data and set out all the rules for future years, as would probably have been preferable.

I will highlight one other point, of which I am sure the committee is well aware. A lot of the dates can be quite confusing, because everything is, in effect, happening two years after the event. That is simply to do with the timescales for availability of emissions data. For example, it is expected that the next set of emissions statistics will be published in June and will cover emissions during the calendar year 2017. It just takes that long for the data to become available and be published.

The accounting rules in the SSI that the committee is considering today relate to emissions during the calendar year 2017. In essence, the purpose of the SSI is to allow for full statutory reporting on the 2017 annual target under the 2009 act, once the statistics become available later in the year.

I hope that that is helpful.

**The Convener:** It is.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I want to get a handle on what is going on. Do we know how many participants in the ETS there are in Scotland?

Do we even have—I see the witnesses' body language—an approximate figure? I understand that, broadly speaking, there are certainly no more than 100, and the number may be substantially fewer than that. Could you give us a description in broad terms of who participates, so that we can understand a little bit more what is going on in what is a highly technical area.

09:45

**Dr Russon:** I am very happy to do the best that I can to answer that question.

We will have to write back to the committee on the exact number of participants: we will be happy to do that. The operation of the EU ETS in Scotland covers fixed installations; I think that Stewart Stevenson's question relates primarily to

them. My best understanding is that about 100 participants is the right first-order approximation but, as I said, we will write back with the exact current figure.

The installations are large ones that emit significant quantities of greenhouse gases. Prime examples are large industrial facilities, such as power stations—although, obviously, there is no longer significant coal-fired power in Scotland. If we want to think about the sectors in “Draft Climate Change Plan—the draft Third Report on Policies and Proposals 2017-2032”, for example, we are primarily talking about heavy industry and parts of the power sector.

Aviation for destinations within the EU is also covered by the EU emissions trading system; operators of those flights also report under the system.

**Stewart Stevenson:** That is kind of what I thought. What effect does the system have on operation of those large industrial facilities? I am sure that my colleague Angus MacDonald will be interested in the Grangemouth refinery, which I am quite confident is one of the 100 or so participants. I am also thinking about aviation, because there is a lot of that. Does the system mean that there are cash outflows, because those businesses have to buy credits? Are other businesses in Scotland net contributors in providing credits that can be bought? In broad terms, who are the parties in the trading that goes on? I am not looking for absolute detail.

**Dr Russon:** As I understand it, the thrust of the question is to do with functional operation of the EU emissions trading system. I say, as a significant disclaimer, that that is not my policy area, but I would be happy to ask colleagues to provide a more detailed written explanation.

Perhaps Andrew Mortimer could talk about auctions and free allowances for installations first. I will then come back to the SSI.

**Andrew Mortimer (Scottish Government):** Auctions are run approximately 12 times a year, and data that relates to auctioning of United Kingdom emission allowances under the EU ETS can be picked up on the Intercontinental Exchange. That is one part of the system.

The national implementation measures are another part of the system. Industries that are at significant risk of carbon leakage to outside the EU are, in essence, given a free allowance.

The new entrant reserve is another part of the system. Essentially, that reserve is drawn from as and when a new business or industry comes into being that would qualify for a free allocation of allowances, but does not have one at the time of

its set-up, because it has no historical reference data.

**Stewart Stevenson:** My final question might be the most important one. Roughly—again, I am not expecting exactitude—what percentage of our total emissions are covered by what the SSI is trying to do? To be blunt, if the figure is a tiny one to the right of the decimal point, our concerns will be comparatively modest but, if it is 10 or 15 per cent, we might be more interested. It would be helpful to know that.

**Dr Russon:** The percentage is definitely more of the latter magnitude. Again, I will have to confirm the exact percentage, but about 25 per cent of Scotland’s total emissions are currently traded under the EU ETS.

I emphasise that the SSI does nothing in terms of the on-the-ground operation of the emissions trading scheme; it simply reflects the operation of that scheme when it comes to calculation of emissions for reporting on climate targets.

**Claudia Beamish (South Scotland) (Lab):** You will probably have a short and straightforward answer, but I would like clarity. We have the Climate Change (Emissions Reduction Targets) (Scotland) Bill—as you know, the stage 1 report has been published. Am I right in thinking that, unless there are amendments, the bill will not make changes to what happens annually and that that will just flow from the 2009 act? Is that correct or are there any implications?

**Dr Russon:** I think that I have understood the question correctly, but please tell me if I have not. The need for the current SSI stems from the fact that the bill’s provisions are not yet agreed, let alone in force. Until such a time as an act is in force, in whatever form Parliament eventually agrees, the 2009 act’s requirements remain in legal force. The SSI flows solely from the 2009 act’s requirements.

In terms of what the bill will mean going forward, if the relevant parts of the bill were to be agreed in the form in which they stand, future climate targets will be set and reported against on the basis of actual emissions from all parts of the economy. That will have a range of consequences, one of which is such SSIs will no longer be needed.

**Claudia Beamish:** I was not sure about that. That is helpful.

**The Convener:** Can you clarify whether we are talking about net emissions in which we take sequestration into account?

**Dr Russon:** I can assure you that that is an area of absolutely notorious complexity, even within the Government. The term “net” is, problematically, used in slightly different ways by different parties. We use it in the same way as the

convener is using it, which is to refer to emissions sources minus emissions sinks. In that regard, absolutely nothing will change through the SSI, the bill or anything else that is being discussed at the present time.

In some of its previous advice, the UK Committee on Climate Change has sometimes used the word “net” in the way that, in my opening remarks, I used the term “adjusted”, to refer to emissions net of operation of the emissions trading scheme. Our preferred terminology—obviously, it is a matter of preference—is to refer to that as the distinction between adjusted emissions and actual emissions. In my previous answer, I intended to refer to the actual levels of emissions from heavy industry and the power sector, rather than the pro rata share of EU-wide emissions that is used under the adjustment calculation.

**The Convener:** Thank you for clarifying that.

**John Scott (Ayr) (Con):** I have a relatively modest and uncomplicated question. I want to know about aviation activities and caps and whether those caps have been exceeded or undershot. I have not read it, but the clerk’s note mentions that

“A paper setting out how the ‘aviation cap’ and the ‘fixed installation cap’ for 2017 have been determined has been published”.

I am afraid I have not seen that. Could you tell us how that has turned out?

**Dr Russon:** I defer to Andrew Mortimer on how the various components of the cap are calculated.

On the initial part of your question on the outturn performance comparisons to the cap, I do not have figures in front of me, but I am happy to write back to the committee with them. All of that information is available through the official statistical bulletins that are published each year.

**Andrew Mortimer:** As with all such calculations, calculation of the aviation cap is consistent with EU practice and UK practice—it follows them. The calculation is based on Scotland’s share of EU aviation emissions in the reference period 2004 to 2006. We replicate in Scotland the approach of the EU target, which is to reduce, in phase 3 of the ETS, aviation emissions by 95 per cent, from 2010 aviation emissions.

**John Scott:** My understanding from the aviation industry is that it is on track to meet the targets. Is that correct?

**Andrew Mortimer:** I do not have that information to hand, but I can write with it, if you wish.

**John Scott:** Thank you—please do that.

**Stewart Stevenson:** To close this off, it might be useful if I give my description of the ETS to see whether it is reasonable. I understand that, under the ETS, heavy industry is given allowances that relate to its presumed emissions. If a company emits less, the allowances have value, because they can be sold to somebody who has insufficient allowances. The economic value from being able to sell allowances to someone else creates an incentive for those that have allowances not to emit as much as their allowances permit, and there is a disincentive for those that emit more than their allowances permit, because they have to pay out money for that. Is that a fair description of what the whole thing is about? It is about trading the allowances.

**Dr Russon:** I repeat the caveat that the issue is not within my immediate policy expertise, but that sounds like a reasonable description of a cap-and-trade scheme such as the ETS.

**Mark Ruskell (Mid Scotland and Fife) (Green):** How is radiative forcing taken into account in relation to aviation? Is the science on that changing?

**Dr Russon:** That falls outside the scope of the present SSI, but I am happy to do my best to explain how it fits into the wider legislative framework. Section 16 of the 2009 act incorporates a fair share of the emissions from international aviation in the scope of Scotland’s targets. The committee will be aware that Scotland was the first country to do that; we were joined by Wales late last year and, to the best of my knowledge, Scotland and Wales remain the only countries to include international, as well as domestic, aviation emissions in their domestic target frameworks.

Through an entirely separate piece of secondary legislation, which I think was made in 2010 or 2012—I will confirm the year later—section 16 sets up rules for determining a Scottish share of international aviation activity. As part of that, section 16 refers to an aviation multiplier, which is called “the radiative force factor” in the SSI—to the best of my understanding, they are the same thing—to which you referred. That multiplier applies to such emissions to reflect the additional effects of non-CO<sub>2</sub> emissions at altitude.

The 2009 act required ministers to seek advice from the Committee on Climate Change on the appropriate level for the multiplier. In whichever year the SSI to which I referred was made—I believe that it was 2011—the CCC advised that the most appropriate level, on the basis of scientific understanding at the time, was a multiplier of 1, which is in statute. I am certainly not an expert on where scientific understanding of the issue has got to; I am aware that studies have been published that suggest values other than 1,

but I am not aware of whether there is a consensus about an alternative value.

Under section 16 of the 2009 act, ministers have the power to introduce further sets of regulations to amend the rules. If they wished to do so, ministers could seek further advice from the Committee on Climate Change on any aspects of that before they introduced further regulation.

**The Convener:** In essence, the SSI is about calculating whether the carbon units from net emissions are credited or debited. That is the narrow focus of the SSI.

**Dr Russon:** The SSI relates solely to the EU ETS adjustment calculation for 2017.

**Stewart Stevenson:** I make the observation, which I hope will be helpful, that when the UK Committee on Climate Change was asked for advice on the radiative forcing multiplier, it was unable at that time to find robust evidence to suggest that the multiplier would be anything other than 1. That was the advice that I received.

**The Convener:** I thank the witnesses for their time and for giving such helpful evidence. We will consider the instrument as part the committee's next agenda item. I suspend the meeting briefly to allow the witnesses to get on with the rest of their day.

10:01

*Meeting suspended.*

10:01

*On resuming—*

**The Convener:** Under item 2, the committee will consider two negative instruments. As no member has any comments to make on the Carbon Accounting Scheme (Scotland) Amendment Regulations 2019, which we have just discussed, does the committee agree not to make any recommendations on the instrument?

**Members indicated agreement.**

### **Loch Carron Marine Conservation Order 2019 (SSI 2019/101)**

**The Convener:** Do members have any comments to make on the second instrument?

**Stewart Stevenson:** I welcome the permanence that will now be given to the protection of the features in Loch Carron. The interesting thing, from the committee's papers, is that the instrument will have a very small economic impact—for example, it is suggested that the impact on employment will be less than 0.1 of a person. The instrument is an excellent

example of Parliament and Government working together on an important environmental issue.

**The Convener:** Very swift action was taken.

**Angus MacDonald (Falkirk East) (SNP):** I am certainly pleased to see the action that is being taken to allow the recovery of the flame shell beds and to maintain the Loch Carron maerl beds in a favourable condition. It is ironic that the action is being taken as a result of the damage to the Loch Carron flame shell beds that was done just over two years ago. The instrument should send a strong message to fishermen with mobile gear that they need to be extremely careful about which areas they target in the future and that the Scottish Government is watching.

**Mark Ruskell:** I agree with Mr MacDonald that the instrument sends a strong message. However, we know that there are people who are not listening. The instrument came about because of the illegal dredge of the area, which was discovered by amateur divers.

I have questions about the enforcement measures that the Scottish Government intends to put in place in relation to the marine protected area. It would be useful to write to the Government, seeking clarification on that issue, particularly on the role of electronic vessel monitoring. Clearly, there are times when fishing boats might pass over the MPA, and there is often debate about what activities take place. Are those boats illegally dredging or not? Electronic vessel monitoring, which was agreed by the Parliament, could provide a strong role in enforcement. It would be useful to get clarity on the Government's wider enforcement measures in relation to MPAs—specifically in relation to this MPA, because the desecration that has taken place in the past cannot be allowed to happen again.

**The Convener:** Do members agree that we should write to the Government, seeking clarification of what monitoring and enforcement there will be in relation to the MPA?

**Members indicated agreement.**

**Claudia Beamish:** I identify with the comments of the other members who have spoken on the issue. I respect the Scottish Government for taking quick action at the beginning, which has now been built on to make the measures permanent.

To build on Mark Ruskell's points, when we write to the Government about enforcement, with the committee's agreement, I would like us also to ask whether the fines for infringements are heavy enough and what happens in terms of the cost of damage. I have a concern about how that is dealt with.

In relation to MPAs, I was interested to see, in the partial business and regulatory impact



assessment, that the contribution of an “ecologically coherent MPA network” is greater than the sum of its parts. I highlight that because it is important in considering how we protect our marine environment.

With the agreement of the committee, it would also be helpful if we could ask the Scottish Government another question. The Marine (Scotland) Act 2010 talks about not only protecting, conserving and recovering the marine environment but enhancing it. I would like to know about the degree to which that is being addressed, because I do not see it mentioned in relation to the instrument.

I have one final point for the record, although I do not know whether we need to write about this. The BRIA states:

“It is assumed that, where fishing activity is impacted upon, it ceases altogether as opposed to relocating elsewhere. In reality, some activity is likely to be displaced rather than lost entirely.”

I understand that the BRIA has been done on the basis of that activity being entirely lost rather than displaced, which is not necessarily a good approach. I respect Stewart Stevenson’s point that the economic impact is extremely small in this case, but, as a matter of principle, perhaps an assessment that is based on activity being not entirely lost and likely to be displaced could be considered for the future.

**The Convener:** Do you want us to cover that point in the letter to the Government?

**Claudia Beamish:** I would appreciate it if we could raise the issue. It leads on to a point about future cost benefit analysis. I am not concerned in relation to this particular instrument, but I want to highlight the general point along with the other points that members have made.

**The Convener:** Do members agree that we should write a letter covering all the points that have been made?

**Members indicated agreement.**

**The Convener:** Do members agree that we do not want to make any recommendation in relation to the instrument?

**Members indicated agreement.**

10:08

*Meeting suspended.*

10:10

*On resuming—*

## EU Exit and the Environment

**The Convener:** Item 3 is evidence on the potential impact of a European Union exit on the environment. I am delighted to welcome Professor Colin Reid, professor of environmental law at the University of Dundee.

Professor Reid, I understand that you would like to make a short opening statement before we ask you some questions.

**Professor Colin Reid (University of Dundee):** It was suggested that it might be helpful for me to summarise a few points.

**The Convener:** It would be.

**Professor Reid:** Moving away from the EU common frameworks into a different situation has political and technical legal aspects. Regardless of its merits, a number of fundamental questions have to be asked when we are thinking about common frameworks.

The first is, what sort of framework, if any, is needed to deal with a particular point? What are the advantages and disadvantages of doing things independently and separately as opposed to doing them collaboratively? That is, to a large extent, a political question that affects economics, business, morals, technical issues, scientific issues and so on. We have to decide whether we need a framework and, if we do, what sort. Should it be a legal one, a simple agreement or nothing at all?

If you are going to have a framework, you then have to ask who will determine its content. Will it be agreed by all the members or will somebody have a final decision-making power?

Once you have decided that there will be a framework, it might need to be implemented through legislation. Regardless of who has created the framework, some of the implementing legislation might have to be done at different, devolved levels. The EU frameworks are often put into law by the individual countries or jurisdictions, as opposed to being legislated for centrally.

The process of creating the frameworks should then be subject to some sort of scrutiny, whether public or parliamentary. Who will make the decisions? If decisions are being made by Governments in agreement, to whom are they accountable for what they do in making those agreements?

Finally, you have to ask what happens about compliance enforcement and monitoring. If a group of states or jurisdictions has agreed that there should be a common framework, how do we

make sure they stick to it, and what happens if they do not?

Those fundamental questions must be answered as fundamental design challenges in determining common frameworks, quite apart from deciding on the need for them.

**The Convener:** Thank you. I have a question about the devolution settlement. In your submission, you say:

“The Brexit process has revealed weaknesses in the devolution settlement in relation to arrangements for collaboration and dispute resolution between the administrations within the UK.”

Can you elaborate on that?

**Professor Reid:** The devolution settlement was designed when the United Kingdom was a member of the EU. There has always been a concern that, as soon as power starts to be devolved, there is a risk of fragmentation, with different Administrations going off in completely different directions, causing all sorts of trouble for business, trade, the environment and all sorts of things.

In some areas, that was dealt with, to some extent, by having the category of reserved powers—areas in which it was thought that there needed to be a simple, single UK vision or view of things were put into that category. If we were starting in a different context, we would ask whether we needed to think about a lot of other things and make arrangements for the different countries in the UK to work together on them, but there was no need to think about that, because the EU provided a common pattern or framework.

In some ways, that was very helpful, because it allowed the different nations of the UK to diverge, to some extent—to experiment, go their own way and reflect their own preferences and priorities. However, you had the—I was going to say backstop, but that is probably not the word to use just now—guarantee that things would not go too far and that the UK nations would operate within the same broad envelope that was provided by the EU. With that envelope disappearing, there is now the potential for the different countries in the UK to go off in radically different directions without any coherence, collaboration or co-ordination. Politically, they may not want to do that, but, theoretically, they could go off in completely different directions. There is not really a forum for discussing that, because, although the joint ministerial council was designed and intended to provide such a forum, all the evidence is that it has not really been effective in that way, so something has to change.

10:15

**The Convener:** Instead of power in certain areas, such as the environment, resting with the devolved Governments, we could be subject to a situation in which that power really rests with the UK, which is not what devolution was designed to achieve.

**Professor Reid:** The devolution settlement provided for reserved and devolved powers. The fallback position was always the supremacy of the UK Parliament. If there was something that had not been thought about or something that it was absolutely essential for there to be one view on throughout the UK, the fallback was that the UK Parliament had ultimate residual supremacy.

**The Convener:** But that fallback probably has the potential to be quite substantial.

**Professor Reid:** Given the weaknesses of other ways of working, it may become necessary.

**Stewart Stevenson:** It is precisely the issue of constitutional supremacy, which you address in paragraph 2 of your very helpful submission, that I want to pick up on. Under the Scotland Act 1998 et al, there is provision for cross-border activities with co-decision making. I have had experience of a couple of examples of that, one of which related to canals. Under the old arrangements, which have been superseded, I found myself, as a minister, having to provide authority for the British Waterways Board to sell land in Birmingham, because the rules were that all the parties—the Scottish ministers and the UK ministers—had to agree. In other words, either side had a veto.

The other example was membership of the UK Climate Change Committee, whose appointments require unanimity among all four jurisdictions as equals in the decision-making process. Indeed, there was an example of a disagreement—I will not go into the detail, because it concerns individuals—but the process worked well to resolve it and we got someone appointed on whom we could all agree.

There will be other examples of which I am not aware whereby the UK Parliament has surrendered its supremacy. Is it your view that, in legal, constitutional terms, that surrender of supremacy is a provisional one that can be undone and that therein lies the danger? I have heard no defence of such cross-ministerial working from any quarter or any suggestion that it has been working well.

**Professor Reid:** You have put your finger on a key issue. Ultimately, the power rests with the UK Parliament, and it can create these structures for joint working and decide the limits of them. It can also redefine them in the future, and either expand them when things are going well or restrict them.

**The Convener:** Where does the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill sit in all of this? I guess that the continuity bill is designed to, in effect, prevent the situation that we have just described.

**Professor Reid:** Yes, but, to the extent that it was trying to limit the power that Westminster has, it was struck down. Those are the bits that the Supreme Court said cannot work, because, ultimately, the UK Parliament has the final say. The UK Parliament could repeal the Scotland Act 1998 or completely redefine it. That is the ultimate constitutional fallback at present.

**Mark Ruskell:** On a different topic, you talk in your paper about the transparency of decision making in Europe and some of the frameworks that we already have, such as the co-decision-making process between the Council of the European Union and the European Parliament and the involvement in stakeholders in that, and the potential lack of transparency with a joint ministerial committee process. Can you point to an example from Europe where transparency has resulted in substantially better laws?

**Professor Reid:** I find it hard to think of an example offhand. The whole nature of decision making in Europe has its strengths and weaknesses. For example, the fact that the process is often long and slow is clearly a problem when it comes to responding to changing situations and circumstances. However, one of the advantages of taking that time is that people know what is happening, and there are chances and opportunities to use the various mechanisms at national and EU levels to lobby and highlight ideas in order to try to change people's views.

The danger with a joint ministerial committee process is that the way that the JMC has been working so far has not been particularly transparent; people do not know what it has discussed, what it has agreed and what decisions are going to be taken. If we move from frameworks being decided in a slower but more open process, we might have more efficient government but at the cost of accountability and transparency.

**Mark Ruskell:** Are there particular areas of EU policy that you feel have been substantially changed as a result of stakeholder involvement?

**Professor Reid:** Depending on whom you are speaking to, some people will say that policy has been unduly shaped by industrial stakeholders and their interests, while others will say that nature organisations, for example, have had a significant say in the shaping of legislation that, according to some, is obstructing business. You will get different views from different people.

**Mark Ruskell:** Ultimately, though, which stakeholders to listen to is a political decision.

**Professor Reid:** Yes, but the important point is that everyone should have the opportunity to input into the process.

**Claudia Beamish:** Good morning, Professor Reid. I, too, found your submission very helpful on what I find are very complex issues.

I found the section on air quality very interesting with regard to your comments on minimum standards. If I understand it correctly—and please stop me if I am not making sense—Administrations could choose to do more under present EU arrangements. I wonder whether you can say a little more about the remark in your paper on

“the mutual recognition of documents certifying that emission standards are being met, rather than each jurisdiction requiring its own distinct certification.”

You then go on to say that only

“differences in the outcome ... from a similar process, rather than wholly different processes”

would be faced. I had not thought of that before, and I found it interesting.

**Professor Reid:** I should say that I was starting with a blank sheet rather than reflecting current thinking.

**Claudia Beamish:** Absolutely. I should have prefaced my remarks with that.

**Professor Reid:** The example that I was thinking of was the scandal over the testing of diesel car emissions. Different countries might, for good reasons, want to set different standards on, for example, how many parts per million can be emitted, but from the point of view of the industry, if everybody shares an understanding and has access to the same testing equipment and so on—using the same testing protocol and the same equipment, and measuring things in the same way—a degree of coherence is created that everybody can work with, even though different countries can decide to set different thresholds.

For all concerned, such an approach is possibly much less disruptive. You can have quite big differences in the standards that are set, but if your process for getting there, the monitoring and so on are the same, that might be less disruptive than much smaller but substantive differences that require you to go through different procedures, have different documents and use different processes, testing equipment or whatever.

Even though we might have different ambitions and want to achieve different things, it is a question of trying to work out where we can reach agreement on the processes, in order to make life easy for everybody. If we have comparable data

across time and geography, officials and Administrations understand what is going on and producers and traders know the score and the system. They know that they might have to do different things in different countries, but the system should be the same.

**Claudia Beamish:** Thank you. That is helpful.

To go beyond that, do you have any observations about the possible new arrangements for enforcement? To go further still, do you have any comments on the arrangements for possible prosecutions and the independence of any watchdog?

**Professor Reid:** There is a separate consultation on the issue of the watchdog. Independence, expertise and adequate resources are fundamental to that working.

Air quality is a classic example of an environmental problem that must be looked at in lots of different layers and dimensions, because we must have the overall strategy. There are now meant to be more particular local measures that can affect the design and construction of emitting equipment and its use in particular places at particular times. It is important to have clear and definite rules for those measures. Where there is a general scientific and technical consensus on certain matters around testing, having national differences where there is no need for them complicates things. A consensus allows us to concentrate on what each nation wants and to focus on setting the standards.

**Claudia Beamish:** I appreciate what you said about there being a separate consultation, but is it possible for you to help us with our thinking by making any comment? I do not want to put you on the spot, but—

**Professor Reid:** After this meeting, I will go back to the office to start writing my possibly quite lengthy response to the consultation. The criteria of expertise, independence and resources are crucial. There can be merits in linking the enforcement and monitoring to existing frameworks in Scotland. There are also merits in having a completely separate body, which is the line that is being followed in England. Wales is interesting, because it is starting in a very different position. It has quite different foundations that it might or might not choose to build on. On Thursday, I will speak at a conference that the UK Environmental Law Association is holding. One of the key issues to be discussed at the conference will be which of those options people think is the best.

**Mark Ruskell:** The air quality issue has been foremost in the public's minds, and the role of the European Court of Justice has been important in driving Government action. Do you see the office

for environmental protection, which Westminster has proposed, as having a similar role? Do you think that it could be effective in challenging the Government when its plans are seen as failing to meet the required air quality targets?

**Professor Reid:** The great advantage of the current position is that the European Commission sits outside the national frameworks but has real levers and power when it comes to calling the Government to account. When we get rid of that level outside the country, we are clearly weakening the potential. Therefore, it becomes a question of how effective, vigorous and respected any watchdog becomes. Will it be tied into parliamentary procedures that will be truly effective in calling Government to account? Will the public and other stakeholders have sufficient regard for it that its views are taken seriously, or will Government be able simply to brush it aside? That will largely be a culture issue. When we design something, it is hard to say now whether it will be a success. Over the years, we have had lots of examples of different bodies that have been set up: some are respected and their views are followed; others are not. Attitudes change over time; the Royal Commission on Environmental Pollution was a highly respected, strong body at one stage, but after a time it was simply abolished.

10:30

**The Convener:** It strikes me that 29 March has been and gone, but we are still talking about concepts rather than actual plans. There is a huge question mark for the people who have to operate in this sphere, such as manufacturers of particular plastics. How much are things coming together?

**Professor Reid:** On the wider issue of governance and enforcement, there was surprise that the current consultation is still so open ended, given how close we are to Brexit day—or even past it—and the absence of anything to do with interim arrangements.

With regard to common frameworks, a vast slew of legislation has gone through, and I do not know of anyone who has been able to follow what is happening. There is an assumption that, for the time being, the status quo will follow; nobody is rushing to change things immediately, partly because of uncertainty about the withdrawal agreement and whether we will be tied into the status quo for a period.

Civil servants at UK, Scottish and other levels have been working incredibly hard to get through a power of work, but they would admit that there will be gaps and things that they have got wrong. The situation is unprecedented, with people trying to change things in the face of such political uncertainty, not knowing the exit date or what the

arrangements and position will be immediately afterwards. I find that astonishing; I have got to the stage at which my lecture slides have not just a particular date on them but say, "As of lunch time on such-and-such a date, this is the position".

**John Scott:** Would that be an early or a late lunch? [*Laughter.*]

I return to common frameworks and how they might be established. Your paper offers many variables for solutions. One of your points is that the European Union (Withdrawal) Act 2018 is the real starting point. From the many possible options that you propose, how should we proceed from here? Your paper is like a strengths, weaknesses, opportunities and threats analysis. You are long on analysis and options, so could you indicate which options you think we as a Parliament should pursue, which may be different from those that the Government should pursue?

**Professor Reid:** The ideal is to have truly agreed common frameworks with joint working between the Governments in which things do not move forward without the agreement of all four Administrations. In turn, that leads to the question how the Parliaments should keep an eye on what the Governments are doing. That requires either the Parliaments to come together at the joint, UK level to scrutinise what is happening, or each Parliament to have its own mechanisms to make sure that it has input before the Government agrees to something and that it can call the Government to account afterwards.

Heading for joint, properly agreed, common frameworks is the answer. It might make sense, for practical reasons, for the Administrations to divide up responsibility for particular issues—Scotland might lead on some fishing matters, and other Administrations might lead on other matters—with what comes together as the way forward being agreed by all of them.

**John Scott:** I suppose that that is the real sticking point. If three of the four Administrations can agree, but not the fourth, how should that ultimately be resolved?

**Professor Reid:** When we talk about a new structure, we must also talk about dispute resolution that involves a process for negotiation and arbitration or whatever. Ultimately, there is a difficult question that is complicated in the UK context due to the disparate sizes of the nations. In many cases involving a number of units coming together, there is not such a great disparity in size. However, England is a great deal bigger than the other UK nations in terms of its population and economy, which means that the de facto power might sit there. In terms of the political arguments and balance, it is difficult to say that there will be a contest between equals.

**John Scott:** Quite. Of course, apart from the political arguments, there are also the functions of geography, latitude and the differing environments in which each of the four countries operates. Once again, we return to the issue of the huge number of variables. That also, not unreasonably, adds to the mix with regard to the difficulty of deciding the best way in which to proceed.

**Professor Reid:** I am afraid that it just is a complex issue. That is why, in the longer term, getting a settlement that puts in place a framework with regard to how the various Administrations work seems to be the best way forward. It is important to revise and revitalise the joint ministerial committee and to get it to work with greater transparency and with a clearer means of dispute resolution that has the trust of the different Administrations, rather than have the Cabinet Office play such a key role in things.

**John Scott:** Are you optimistic that, if the difficulties of getting Brexit organised that have been manifest at Westminster were ultimately resolved in the short to medium term, there would be sufficient good will all round to make the joint ministerial committee work more efficiently, given the energy that is currently being expanded elsewhere?

**Professor Reid:** There is potential for that to happen, but I am not too optimistic about it, because of some of the conflicts that there have been and because everybody has been extremely busy. There is still a rush to get things done and resettle things. For the next two, three, five or seven years, there will be a rush to get the relationships with the EU and a lot of trade partners up and running. There will be a lot going on, and there is such a backlog of work that has had to be abandoned while Brexit has dominated everything that I fear that there will be no appetite for reflecting on the difficult issue of the arrangements around the relationships between the UK Administrations.

**The Convener:** You talk about the JMC being revitalised and all countries of the UK having equal status in the decision making on common frameworks. Would you also apply that to decisions that are made on trade agreements?

**Professor Reid:** I would have thought that one of the areas of real contention concerns the fact that international affairs, including trade agreements, are currently completely in the hands of the UK Government, in the same way that, technically, it is only the UK that the EU deals with in terms of international trade. All the arguments that there have been about the role of the devolved Administrations in the UK's negotiations with the EU will recur and will, in fact, become ever more serious, because, although there have been opportunities for the devolved

Administrations to feed into the negotiation process with the EU, it is less obvious how the Scottish, Welsh and Northern Irish voices will be heard when the UK is discussing trade with China, the USA and so on.

**The Convener:** That is an important issue, because a lot of the standards that will be applied might depend on what kind of trade agreements are made with countries across the world.

**Professor Reid:** Trade agreements can cut across the power of the individual Administrations to do things. The Agriculture Bill that is going through Westminster is explicit about giving UK ministers the power to make regulations to deal with World Trade Organization issues, which cuts across devolved responsibilities.

**Stewart Stevenson:** We have been talking about the joint ministerial committee. I have a simpler solution to the issue, which is something that I have been campaigning for all my life. If we have joint ministerial committees, why do we not have joint parliamentary committees? I think that all the Administrations would consider that such matters of joint working should not be simply for Governments.

**Professor Reid:** That is an excellent idea, which has been mentioned at various times. If there is to be joint working between Administrations, why not have joint commissions, or whatever, between the various Parliaments to scrutinise it?

**Stewart Stevenson:** It is worth saying that I am aware of at least one instance—I am pretty sure that it is not the only one—of joint meetings between Parliaments. A committee on which I sat once had a joint meeting with an Australian Parliament committee. It was interesting that the two official reports co-ordinated, which resulted in nearly the same report being produced by the two Parliaments.

The other issue, which broadly touches on the same subject, is to do with watchdogs, which you have mentioned. The courts seem to stand above Parliament; they can hold the Parliament and the Government to account. Therefore, should we be talking not just about having watchdogs, but about having a courts system that has the ability to hold the Governments to account, whether at UK, Scottish, Welsh or whatever level? We are not hearing very much about that issue.

**Professor Reid:** The courts certainly have a major role to play. On the common frameworks, the job of the courts is to make sure that the law is being applied. They can do that only as far as the law says. The convention in the UK and Scotland has been that the law tends to be empowering, rather than something that sets out particular outcomes to be achieved. It would be something

of a change to have the courts involved in the nitty-gritty of detailed issues.

That will become a significant issue in the environmental area as EU law becomes domestic law. It is much more of a requirement of EU law that particular outcomes, such as a certain level of water quality or the protection of European nature sites, have to be achieved, unless there are certain very narrow derogations. It is not altogether clear how those requirements will fit into our judicial system.

Take bathing water, for example. Bathing water is meant to meet certain standards. If it does not, who will have the power to go to court to ask for those to be met? When will they do that? If we are talking about recycling standards, for example, will people wait until standards have not been met by the due date, or will they be able to take action before the due date, if it looks as though they will not be met?

The failure to meet the bathing water standards could be the result of a combination of several factors. What remedy could a court produce? It could tell the Government that it has got it wrong and that it has not been doing it right, but should it be saying what further steps have to be taken? How would the follow-up be done?

Another example would be air pollution. So many different factors feed into that. Would you simply legislate for the final quality, or would you legislate in more detail below that, so that you could have more enforcement? That approach would deprive you of your flexibility—everything would get very fixed and rigid, and it could then become very legalistic.

I am sorry that I do not come with easy answers, but there are not any.

**The Convener:** Exactly—there are not any.

**Mark Ruskell:** There is a concern that a lot of the statutory instruments that we have been working through that effectively set up the rules for a no-deal Brexit could become the permanent basis for retained law beyond the transition period. What is your view on that threat? I guess that some people might see that as an opportunity.

10:45

**Professor Reid:** It is almost inevitable that what has been done in a hurry to keep things going will continue for a long time. Because so much is going on, nobody will be able to revisit it. Inevitably, many of the statutory instruments get rid of the traditional EU oversight layer and the need to check and report on things. One of the big losses of coming out of the EU is that there will not be the reporting and monitoring by authorities outside the UK. That is why the idea of some sort

of internal governance watchdog to fulfil that role separately from Government is important.

As I said, in the next few years, sorting out the arrangements for our relations with the EU and beyond will be the dominant factor. People will not be able to think about whether we want to do things differently or better, because they will not know how much freedom of action they will have. If we are to remain in alignment with the EU, that will have to happen; if we are going to be influenced by potential trade agreements, what is necessary for those will dominate the thinking. The chance for genuine original and creative reflection on where we are and what we think is best for us and our needs, whether just in Scotland or in the UK, will be limited for the next while, if only because everybody is exhausted.

**The Convener:** The Scottish Government has made a commitment not to create divergent policy as a result of the frameworks. Might that restrict Parliament? That statement is almost tying the Government to something.

**Professor Reid:** It is a trade-off. You either have freedom to do your own thing or you get the benefits of working with other people. Within the EU structure, absolute uniformity is required on rules in some areas, but in other areas broader objectives are set that each nation and jurisdiction can reach in its own way. There is a question about what the alignment is with. Is it detailed alignment with all the particular rules, or is it just alignment with the broad standard and objectives?

**The Convener:** I guess that that is a question for the cabinet secretaries, who we will hear from next.

**John Scott:** Notwithstanding that, I will ask about the issue, anyway. What are the attendant risks for Scotland of that aspiration of the Scottish Government? What might be the costs of that commitment?

**Professor Reid:** There may be particular issues on which Scotland would want to go further and where it is held back by the EU members. This is a UK example rather than a Scottish one, but it was often said that, in the EU, the UK wanted to go further on animal welfare but was being held back by the other members. However, going back 20 years, on issues such as water quality, Britain was being pushed into higher and more rigid standards by the rest of Europe.

**John Scott:** I remember.

**Professor Reid:** There is a trade-off in all these things. It is a question of identifying the areas in which Scotland or the UK wants to do something different and have higher, better and more demanding standards and where we are being held back by the desire to keep in step with others.

**The Convener:** The Scottish Government has also made a commitment to keep its standards in line with EU standards going forward, as they develop. Has the UK Government made such a commitment?

**Professor Reid:** Not in as many words. The UK Government has a commitment to looking after the environment, but the 25-year plan that was produced is not phrased in terms of keeping in line with the EU.

Of course, the Scottish Government's position assumes that keeping in line with the EU is actually the best thing for the environment. Before the EU referendum was held, I was at a conference where there was a fascinating discussion about how one could make a different argument for leaving the EU, which is that it has not done enough to protect the environment, that it is about global capitalism and is industrial-dominated, that it is the baddie and that being in the EU prevents countries from going off and taking radical sustainable opportunities. The way that the debate happened before the referendum, it looked as though deregulation from London would be the dominant theme and that staying in the EU would be the way of providing some protection for the environment. It has been fascinating to see the way in which those perceptions and that debate has changed.

**The Convener:** I guess that that is a question for the cabinet secretaries and the UK Government.

**Professor Reid:** Who knows what the views of the next minister or the next Government will be five, 10 or 20 years from now?

**John Scott:** I am sorry to come back to the question again, but in environmental terms and in a broader sense, what do you see as the attendant risks—if any—to Scottish aspirations of the commitment not to diverge radically from the UK position?

**Professor Reid:** The risk is you lose the flexibility to do things. If the zero waste economy idea was to be taken seriously, it might mean imposing restrictions and limits on the sale and use of certain goods and products, and that might not be possible if we are trying to keep in line with a wider framework.

**The Convener:** The Scottish Government and the committee are about to receive advice from the UK Committee on Climate Change, and we are eagerly anticipating what it will say about targets and potential pathways to achieving reductions in emissions. The Scottish Government has said that it will take that advice and implement it, but the UK Government has not said that so far. How will meeting our ambitions on, for example, climate change be affected if we cannot have

divergent positions on how to achieve them? We will not meet our targets if we cannot diverge and there is not a similar commitment across the whole of the UK.

**Professor Reid:** Climate change affects the whole—obviously, air moves—and you do not have the potential to diverge on, for example, energy and the energy industry, because some of those matters are reserved.

If you believe that an emissions trading system will play an effective role, then the bigger the pool that you are trading in, the easier it is. There are also cost trade-offs. There are several very radical things that could be done to impact on our greenhouse gas emissions, but which would be very disruptive for trade and the economy. Do we want to do that?

**Claudia Beamish:** In your paper, you highlight the deposit return scheme that we are working to adopt in Scotland. I think that I am right in saying that you said that there is “scope for commonality”. Is that different from the Scottish and English Administrations having exactly the same scheme? Is there scope for having different schemes?

**Professor Reid:** There is scope for difference. It is a question of thinking about where there are differences that matter and where it counts that we do things the same. If every nation developed a completely separate system that dealt with different sets of products in a different way, with different labels and so on, that would be disruptive for industry. People moving around the country would get confused and compliance would be poor. However, even if the schemes are different in terms of the products that can be put into them, the scale of the reward and differences at the end of the process, if they use the same classification and labelling system, it will be a lot easier for people to know what is going on.

One of the lessons of the EU was that a lot of the regulation of environmental matters was driven not by environmentalists but by industries that wanted a level playing field and common standards to know what they had to do in all the different countries, rather than having to cope with each country separately. There are advantages in having similar processes and systems, even though there might be different ambitions for the end result.

**The Convener:** Mark Ruskell, do you want to ask another question?

**Mark Ruskell:** My question is related to what has been discussed but is about something slightly different. It is about the environmental principles and how they are being, or are planned to be, applied in different jurisdictions in the UK and whether that could lead to some divergence. I am aware that there are different terms about

whether law should be based on environmental principles or just have due regard to them. Could that lead to divergence?

**Professor Reid:** It could lead to some divergence, but it depends how different the phrasing is in the different countries and how different the lists of environmental principles are. It would help if all the countries adopted a duty to have regard to high-level environmental protection, or at least worked towards that. If each country had an objective that set a high level of environmental protection as a goal to be worked towards, that would help to bring together any lesser differences between the duties.

For example, if the duty in one country was that it just had to have regard to the polluter pays principle and the duty in another country was to act in accordance with that principle, a common framework on producer responsibility for waste and so on might be legally challenged in one country on the basis that it did not do enough to achieve the polluter pays principle. If the duty in some countries was just to have regard to the principle, the fact that the Governments had thought about the principle as part of their planning and policy making would be enough to satisfy the legal requirement. However, another jurisdiction could get into trouble if it could not show that it had not just thought about the principle but had done something to work towards implementing it.

**The Convener:** We are rapidly running out of time, but I will give you the opportunity to say whether there is anything else that you think we should consider when we question not only our cabinet secretaries but UK cabinet secretaries, because the latter will be involved in the creation of the common frameworks.

**Professor Reid:** The issue is how the frameworks will be created and implemented. The latest document on the frameworks is the April 2019 one, which talks a lot about informal agreements, memoranda of understanding and so on. Those are fine in some ways, because they are flexible and easy to work out, but they raise issues about transparency and accountability. We must ensure that the mechanisms that are used enable people to find out what is going on and to have input into them and that they hold Governments properly to account.

**The Convener:** Thank you for your time this morning and your very helpful evidence. I suspend the meeting briefly.

10:58

*Meeting suspended.*



11:06

*On resuming—*

**The Convener:** We continue our consideration of the potential impact of EU exit on the environment. I am delighted to welcome our panel: Roseanna Cunningham, the Cabinet Secretary for Environment, Climate Change and Land Reform; and Michael Russell, the Cabinet Secretary for Government Business and Constitutional Relations. The cabinet secretaries are accompanied, from the Scottish Government, by Katriona Carmichael, deputy director, environment and land use strategy; Don McGillivray, deputy director, environmental quality and circular economy; and Gill Glass, head of UK frameworks unit. Good morning to you all.

We have just had a very interesting discussion with Professor Colin Reid, which largely focused on common frameworks, devolution and the ability of the devolved Governments to set their own policies in the light of proposed common frameworks. Do the cabinet secretaries have a view on whether the devolution settlement is secure, in the light of those frameworks? Is there the potential for powers to be taken away from the devolved Governments?

**The Cabinet Secretary for Government Business and Constitutional Relations (Michael Russell):** That issue was and is at the heart of the negotiations in which we have been engaged through the joint ministerial committee process. The Scottish Government's view has been very clear: we will not be part of a process that undermines the devolution settlement or takes powers away from the devolved Administrations. Equally, we have argued that the Brexit process is, in essence, too heavy for the devolution settlement to bear. Although it is clear that the Scottish Government and I want independence, on that journey we are more than willing to work with those who want to make changes for the benefit of the people of all these islands, because the current constitutional settlement no longer works. A dramatic example of that is the legislative consent process, but there are many other illustrations.

About a month ago, I gave a lecture to the Institute for Government that laid out in more detail how we think things should change. Broadly, the relationship should be put on a statutory footing, and there should be a legislative underpinning of the way in which one Government relates to another. The example for that lies in the EU27's solidarity, work and trust for one another. There is trust in the EU because the ability to enforce regulations is underpinned; the EU is a law-based, rules-based structure. Indeed, the Taoiseach made that point very memorably at a British-Irish Council meeting that I was at when he said that

trust is not simply about saying, "We like you, we think you're good and we want to get on with you"; it is about saying, "We're going to work together, and here's a framework for enforcing that." Regrettably, there is no such thing in devolution, and there needs to be.

The difficulty is that devolution is built on a construct of Parliaments—our Parliament, the Welsh Parliament and the Northern Ireland Assembly—dancing around the concept of the Westminster Parliament's sovereignty. It is an outmoded—one might argue, almost medieval—concept, but it is important to recognise that that is the problem with devolution. If we have a sovereign Parliament that can overrule the other Parliaments, it is very difficult—in fact, impossible—to work as we should be working, on the basis of equality.

However, it is also important to recognise that, in devolution, there is no hierarchy of Governments; there is only a hierarchy of Parliaments. Governments are given particular powers that they can operate, and the UK Government can overrule the Scottish Government only by going to the UK Parliament and using it to do so.

After the Cabinet Secretary for the Environment, Climate Change and Land Reform has contributed, I am happy to go into how all of that relates to frameworks and, indeed, the agreement on the frameworks, which I know has been a concern for the committee. That is the context in which we work. We have worked on the assumption that we will not accept the undermining of the devolution settlement, but we will accept working together, provided that it is voluntary.

**The Convener:** Perhaps Roseanna Cunningham can tell us whether there is a divergence in the policy in her portfolio and how the common frameworks might work.

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** We need to remember that, at the moment, there are no frameworks in place and that the frameworks in question are simply proposed ones. Four legislative frameworks are being proposed for this portfolio interest: chemicals; waste, particularly producer responsibility and waste management; ozone-depleting substances and fluorinated greenhouse gases; and the EU emissions trading system. There are also five non-legislative frameworks proposed for the ECCLR portfolio, and I presume that the committee is aware of them.

All those discussions are still being had at official level, and nothing has yet come to ministers to be signed off. However, we are

continuing to raise the issues around them at the Department for Environment, Food and Rural Affairs devolved Administration meetings. As it happens, I was at a DEFRA DA meeting in Cardiff yesterday, and some of the issues around the proposed common frameworks were being discussed not in terms of individual proposed frameworks but still in terms of how we manage the process. The tricky questions that Mike Russell has referred to are part and parcel of our decision at the moment not to give carte blanche to anything that looks like it will erode the policy responsibility that we in Scotland have. I should point out that Wales is pretty much in the same place on these matters.

It is a tricky issue, and, frankly, I personally would find it helpful if some of those out in the wider network of people involved in all this would stand up publicly and certainly more strongly for the devolved settlement and our devolved policy responsibility. After all, as Mike Russell has alluded to, there is a danger of the presumption of Westminster's parliamentary sovereignty starting to override anything that we do. Of course, environment is an area in which policy is virtually all devolved, and we need to keep reminding people of that at the devolved Administration meetings.

**The Convener:** That leads us on to the issue of stakeholders, their participation in the process and the influence that they can bring to bear.

11:15

**Michael Russell:** I know that the concern about that arises partly from the wording of the quarterly reports on frameworks that the UK Government issues. In particular, a paragraph in the report to December states:

"On the basis of this continuing joint progress and collaboration on future frameworks which ensures the statute book is ready for exit day, the UK Government has again concluded that it does not need to bring forward any section 12 regulations at this juncture. In addition, the Scottish and Welsh Governments have re-confirmed their commitment not to create divergent policy in ways that would cut across future frameworks, where it has been agreed they are necessary or where discussion continues."

That is the important thing: the action is voluntary. The frameworks do not exist, and they will not exist unless there is an exit and until the end of an implementation period, and they will be entered into voluntarily. It is clear that, if we enter into a framework voluntarily and work under it, we will have agreed by that stage that we will try to co-ordinate policy. If we do not enter into a framework or if we say that the framework allows for divergent policy, which is perfectly possible, there is no question about it in those circumstances—there is nothing in that that limits the power of any of the contributing bodies.

Having divergent policy and frameworks may become a real issue in Northern Ireland. If Northern Ireland is essentially in full regulatory alignment with the rest of Ireland and is in full regulatory alignment with the EU, Northern Ireland might be in a framework in which it will do something that is not being done in the rest of the framework. The situation is immensely complicated and—forgive me for saying this—part of the extraordinary idiocy of Brexit.

In no sense have we agreed to have things imposed on us, and we would not agree to that. We have made it explicit that, if section 12 of the European Union (Withdrawal) Act 2018 is used to try to impose things on us, we will withdraw from that discussion at that moment.

**Roseanna Cunningham:** Yes. Part of yesterday's discussion in Cardiff was about the fact that every partner in a common framework will not do exactly the same thing. We have to continue to have that discussion. A common framework means that there has been a discussion and an agreement about how things might be worked through, but it does not require everybody to do the same thing. That continuing conversation needs to be continually brought to the forefront of the discussion, because there is a sliding into what might be regarded as a normal Westminster think space.

**The Convener:** It strikes me that, if any of the devolved Governments disagrees with what the UK Government decides to do, that will not be taken into account. All member states of the EU have to agree on things, and there is a mechanism for that. I suppose that that is one of the things that the EU is good at.

**Michael Russell:** There is no mechanism in the joint ministerial committee.

**The Convener:** There is not.

**Michael Russell:** No report on the JMC structure from the very beginning of devolution—we have heard this since the beginning of devolution—has come to any conclusion other than that that structure does not work and is not fit for purpose. That includes House of Commons reports, House of Lords reports and academic studies. The JMC structure does not work. We have been trying to make it work again with the new JMC (European Union negotiations), but it has not worked.

None of those structures will work unless the members have an equitable relationship. I think that, even if there is equity, there is a better way of doing things. By definition, there cannot be an equitable relationship if there is a sovereign Parliament, and there cannot be an equitable relationship if the UK Government believes that it

can overrule and that it is in some way at the top of a hierarchy of Governments.

It is regrettable that the knowledge of devolution in the UK Government and the civil service is very poor. I have heard Westminster committees discussing that. That is not a direct criticism; that has always been the case since devolution, and it has not really been thought about. David Cameron talked about devolving and forgetting. That has happened. Trying to bring home the reality of devolution to UK ministers is quite a hard job. That is why I look so old.

**The Convener:** I could not possibly comment.

**Mark Ruskell:** I heard Roseanna Cunningham talk about the need to get more support—I presume from stakeholders—to protect Scotland's powers and responsibilities under the devolution settlement. Is that easier to do if we have a clear vision for how we will use those powers, such as through an environment strategy or an agriculture strategy?

**Roseanna Cunningham:** We have been working on the environment strategy and a conversation is continuing to take place on that.

I was not thinking about the issue in those terms. I do not lay the blame for this at the door of the Scotland-based environmental non-governmental organisations, but one of the difficulties is that a metropolitan mindset permeates the London-based ENGOs which, I suspect, are not particularly conscious or understanding of the extent of devolution. Mike Russell mentioned the difficulties in some parts of the civil service, which have not quite absorbed what has happened as a result of devolution. It is not just the civil service that is in that space. In arriving at what might appear, in an office in London, to be a simple solution, it can be forgotten that the environment is an area of policy that is almost wholly devolved, and work needs to be done on that.

**Mark Ruskell:** Do you have an example in mind? Are you thinking about, say, the deposit and return scheme?

**Roseanna Cunningham:** I was not thinking about the deposit and return scheme. I do not want to be drawn on individual examples.

One of the debates that we are having, which I am sure the committee will come on to, is about the form of governance that might be brought into play in a post-Brexit scenario. At some levels, there is an automatic presumption that that governance should be UK governance. No thought is being given to the implications for different parts of the UK, where very different policy decisions are being made. Some of the issues that Mike Russell talked about are important. We normally

think of ourselves as being part of a four-nation group in which each Government has equal standing but, in fact, it is a hierarchical arrangement.

Those issues must concern us, because they can impact on the Parliament's policy-making ability and its ability to hold the Government to account. Members do not want to find themselves in a situation in which I and other ministers say, "There's not much point in asking us about that, because the decision was taken elsewhere." The fact that there are issues of accountability is one of the points that are being lost in some of the discussions that are being had. It is not just civil servants who are not understanding the underlying situation—wider groups are failing to do so, too. We have had conversations in an effort to remind folk about the extent of devolution, but it is easy for organisations with a metropolitan mindset to forget that.

**Michael Russell:** I can give Mr Ruskell a direct example of a difficulty that exists. It does not relate to the environment, but it is a current illustration of the problem. The UK Government has set the visa requirement for students at three years, but Scotland has four-year degrees. An announcement was made without consulting us; I immediately raised the issue with David Lidington and I think that the First Minister raised it at the JMC (plenary). We were given an absolute assurance that the four-year nature of Scottish degrees would be taken account of, but what did we hear yesterday? Students will have to apply for a different type of visa for their final year. Can you imagine going through the process of higher education and having to focus on getting a visa—which is not the simplest thing in the world to do—for your fourth year?

That is an example of an issue that could be dealt with quickly and sensibly, but it has not been—it has got bogged down in the Westminster system, with the view being, "If Scotland is an exception, it'll just have to live with it." During the process of preparation for the Government white paper on Brexit, papers were released in which it had been forgotten that Scotland has a separate legal system. Even though that has been enshrined in law since the act of union in 1707, it had been forgotten.

That is not an individual criticism; it reflects a systems failure. A lot of work has gone into trying to rectify that failure, but we eventually get to Occam's razor, which suggests that the simplest solution is the best, and that is to have a relationship of equity as two sovereign states.

**The Convener:** I am holding my breath as I ask my next question, because I think that I know what the answer might be. What is the relationship between the Scottish Government and the UK

Government in looking at future trade deals? Some deals have been done, and they have implications for the environment portfolio. If the UK Government's negotiating position takes precedence, what are the implications for common frameworks?

**Michael Russell:** The issue is not just common frameworks. We published a paper last August on a modern trade relationship and on how trade deals should be negotiated in the future. The UK is old-fashioned in how it does trade, and it has not negotiated a trade deal itself for a long time, because it has been part of the EU. The world has changed; for example, environmental considerations are now at the heart of many trading relationships now, as they and, indeed, human rights considerations should be.

We suggested a way of moving forward that would involve the devolved Administrations, particularly in areas of devolved competence, but not solely so, as other issues are attached. It is regrettable that the UK Government seems to have taken to heart the wrong lesson from the comprehensive economic and trade agreement between Canada and the EU. Two lessons can be drawn from that treaty, the first of which is that involving everybody who is likely to be affected—in that case, all the Canadian provinces were involved in the negotiation—can produce a treaty that can be implemented.

Some of the issues will relate to devolved competences and will therefore have to be negotiated by those who are responsible for those competences. I repeat that there is no hierarchy of Governments. However, the lesson that the UK Government seems to have taken from the Belgian situation, in which one Parliament refused to ratify the agreement as quickly as other bodies wanted it to be ratified, is that the devolved Administrations must be cut out.

We believe that the arrangement for trade must be entirely different. The Trade Bill has changed as it has gone through Parliament and it has not yet been finalised, but some key things have not changed. For example, the trade remedies authority is to have no representation from Scotland or Wales. Many of the positions that we have talked about today are held in common with the Welsh Government, and our common position is that that authority should have Welsh and Scottish representation or at least someone with knowledge of Welsh and Scottish circumstances. However, that will not happen. Appointments will be made entirely on merit, and it appears that Scotland and Wales do not have enough merit for a place on the authority.

We must change trade deal arrangements, partly because there will be a strong push in agriculture to diminish animal welfare,

environmental and other standards. We should not allow that to happen.

**The Convener:** Has the JMC discussed the trade deals that Liam Fox has showcased?

**Michael Russell:** Liam Fox keeps telling us how wonderfully well he has done on all the trade deals, but all that has happened is that a few—not many—existing deals with the EU have been rolled over to apply to the UK when it leaves. Some deals have been put off because the UK has not left the EU, and some have been impossible to make, because the other party has said that it wants to change things and have a bit of advantage here or there.

The fear is that the UK Government will be neither equipped nor experienced enough to undertake the task. It will negotiate while ignoring the devolved Administrations and their responsibilities, and it will inevitably lower standards, because it is desperate to have the deals. That is highly undesirable.

No matter how many such deals are made, they cannot make up for the deals that we already have. It is a tragic situation that we will go into a set of trading relationships that make us poorer and are worse. I do not know why anybody should volunteer for that.

**Roseanna Cunningham:** One problem is that the UK Government is sticking to the orthodoxy that international trade agreements are absolutely reserved and are not devolved, notwithstanding the likely impact on devolved policy areas. That part of the equation is being left out of the conversation, because the UK Government is sticking to the orthodoxy that international trade agreements are a reserved matter for Westminster. In effect, a trade agreement that might have profound implications for the devolution settlement and policies in the devolved Administrations is being treated as if it does not involve the devolved Administrations. It is an extraordinary position and a point of real challenge for all the devolved Administrations.

At the moment, this affects Wales and Scotland but, should the Administration of Northern Ireland be re-established, I would hazard a guess that, in a number of areas, it will be in exactly the same position. It cannot not be in the same position, because it will face the same issues and challenges. That will be one of the real challenges as we move forward, and there is really no answer to it at the moment.

11:30

**Michael Russell:** We should note that, although international relations are reserved, the implementation of international agreements is not.

Therefore, there is a role for the devolved Administrations in those matters, and that was confirmed by the Supreme Court.

**John Scott:** I welcome the commitment by the Scottish and Welsh Governments to not pursuing policy divergence where we agree that frameworks are necessary, or while discussions are on-going. That is a good starting point. Given what was being said a moment ago about trade negotiations, that might be a good model to be built on through, if not a voluntary agreement in trade deals, at least an understanding of what the UK Government is endeavouring to do. That said, what will the impact be on the Scottish Government's legislative agenda of that voluntary arrangement going forward from here, given how unclear the whole situation is?

**Michael Russell:** I am not sure that I understand that question.

**John Scott:** I am speaking in terms of your future programmes for government.

**Michael Russell:** Only if there were a commitment to legislation in any of the frameworks would there be an impact on the legislative programme. If there were changes in policy, the responsible ministers would be accountable to the committees and Parliament for discussing the policy and moving it forward. There might be an effect on secondary legislation, but it is unlikely.

The question is about scrutiny and how we would scrutinise framework arrangements that we had entered into, if they were not legislative. The way to do that would be through the committees, and through a protocol that we are considering and discussing with the Parliament. Just as we had a protocol for the secondary legislation required by Brexit—I am grateful to the committees that were co-operative in that respect—there should be a protocol for scrutinising the frameworks, should they, in the end, exist. We are talking about a situation that is hypothetical at present. We are moving towards having those frameworks, but they will not exist until after an implementation period, and they will exist for a limited period of time. That is what the legislation says.

The hardest issues to resolve have been with legislation arising out of frameworks. Agriculture and fisheries are examples of where it is difficult to try to tie everything down in legislative terms. Non-legislative frameworks that rest upon memorandums of understanding are easier; frameworks that are underpinned by legislation will always, in the end, mean disputes. As John Scott, given his experience, will know, there is a dispute about whether state aid is covered as a devolved or reserved competence.

That is a problem with the Agriculture Bill at Westminster. The Welsh and Scottish Governments have said that state aids are not a reserved matter, whereas the Westminster Government has said that they are, but it will not answer letters that seek an explanation of why that is. Much in the manner of somebody who does not want to open an electricity bill, because they do not want to see what is in it, the UK Government will not look at the letters that we are sending to ask it to explain how that issue is reserved. It does not appear to come anywhere in schedule 5 to the Scotland Act 1998.

**John Scott:** Let me turn to an easier question that perhaps Roseanna Cunningham might want to answer. Can you provide any further detail on the common frameworks under your portfolio that you have mentioned in relation to chemicals; waste and producer responsibility; ozone-depleting substances and fluorinated gases; and the EU emissions trading scheme? How are those being prioritised in your programme of work?

**Roseanna Cunningham:** As I have said, those issues are still being dealt with at the level of meetings with officials. Those common frameworks do not exist, but they are being continually discussed. I will ask Don McGillivray to comment, as he is probably the most involved in the discussions among officials that are taking place, but I will say something about the one that impacts on the EU emissions trading scheme, as we are having quite a lot of minister-to-minister conversations on that and regular telephone conferences on the issue with Claire Perry.

That matter has some problematic aspects, which again go back to the issue of accountability and scrutiny. If there is a no-deal Brexit, in effect, a carbon tax will be brought in, allegedly on an interim basis. We keep having to get it on the record that it must be seen only as an interim response to deal with a no-deal scenario because, obviously, the far better response would be to have a proper emissions trading scheme. A carbon tax would be outwith even Claire Perry's purview, as responsibility would move to the Treasury. My abiding concern is that, once the UK Government has done that, it might not want to undo it.

That is an example of an on-going issue that ministers are talking about. Don McGillivray can say something about the other three issues that are still under discussion between officials.

**Don McGillivray (Scottish Government):** The waste issue is the easiest to get out of the way, because it is still very much at the scoping stage between officials. Producer responsibility schemes have operated at UK level for some time. We are still at the stage of deciding whether we actually need a legislative framework on waste and

producer responsibility or whether the current arrangements that have operated for a number of years can roll forward as they are. We are trying to decide whether anything has changed as a result of Brexit that means that we need a legislative framework.

We are a bit further on with the issue of chemicals. There is definitely a sense of something having changed as a result of Brexit in the chemicals world and in the relationship between the Governments, and a sense that there will quite possibly be a need for a legislative framework to underpin the future relationship between them. We have had three or four workshops to start to define the objectives and content of a framework, and we have had the first meeting of a governance group that brings together officials in a forum to try to make decisions on the issues, but we have not yet reached the stage of having a draft that is ready to go to ministers for consideration. That is probably still a little bit away.

Apart from anything else, it is hard to put together a draft for ministers until we actually know what specific scenario we are dealing with. That is obviously one of the constraints at the moment.

**John Scott:** My next question is about secondary legislation. What is the Scottish Government's view on the UK Government's statement that EU exit statutory instruments may provide the basis for interim or longer-term framework arrangements? What level of parliamentary scrutiny should the instruments have, given that they could provide the basis for interim or longer-term framework arrangements? Given the evidence that we have just heard from Professor Reid, it seems that there is nothing so permanent as a temporary measure.

**Roseanna Cunningham:** I have already flagged up this morning my concern about some of the temporary measures—that some of the interim solutions might just slide into becoming very long interim solutions. So far, we have been consenting strictly on the basis that the arrangements would be needed in a no-deal scenario; that is what consent is predicated on.

The way in which that scrutiny has been carried out was agreed between the Scottish Government and the Scottish Parliament, and we had discussions with Westminster about how we would manage the entire process. I know that the committee has had to work quite hard, but the process has allowed for some detailed consideration. We might think it appropriate to continue with SI solutions, but consent is not predicated on that basis and the SIs would have to be looked at one by one to see whether that was an appropriate thing to do.

Across the whole SI programme, some of the solutions are pretty technical and there may not be much alternative to them, in which case they would be kept. I have already referred to emissions trading; my concern there is that the interim solution might indeed become a permanent solution. I very much hope that that is not how Claire Perry will approach the matter when it comes up. We had to use SIs to prepare for no deal, but now, we will need to look again at some of the solutions to decide whether they are fit for the longer term or whether they really are only interim solutions that will need to be put away when we are looking at the much longer-term scenario.

**Michael Russell:** This is covered by the phasing of the frameworks. Phase 1 was the starting process. It took quite a while to get the fundamental principles right and to make sure that there was proof of concept for the programme. Phase 2 was detailed policy development. Phase 3, which is what they are beginning to move into—not all of them have got there—includes stakeholder engagement.

Duncan McGillivray referred to phase 4, which is when the final agreement goes to ministers for approval. At that stage, ministers from this Administration will not be approving ad-hoc, temporary arrangements that are designed to suit only one partner. If there is a temporary, ad-hoc arrangement in place as a result of SIs that have come through the no-deal process—Roseanna Cunningham is entirely right about that—that will not stand. New arrangements will need to be put in place at phase 4, otherwise there will not be an agreement. Phase 5 is post-implementation arrangements, after the end of the implementation period—who knows when that will be?

We will not consent to long-term arrangements in areas where the framework is coming into place unless we are satisfied that they are suitable for our purposes, so interim arrangements will be just that. It will be up to individual portfolio cabinet secretaries, as part of Government, to judge whether and how they will consent to long-term arrangements, but we would expect to have an overview of those too, from the JMC(EN) perspective, to make sure that they are acceptable to people.

**John Scott:** Will you both provide a brief update on discussions with the UK Government about UK legislation that impacts on devolved policy areas?

**Roseanna Cunningham:** I will go first, as we discussed that at the Cardiff meeting yesterday, so I can update you.

We have no timetables for the Agriculture Bill, the Fisheries Bill or the draft environment bill. We simply do not know what is happening there.

Discussions about certain aspects of the Fisheries Bill are on-going. Some of the devolved/reserved discussions have been resolved, but we still do not have a timetable for it. There are still some devolved/reserved discussions going on in relation to the Agriculture Bill; and there are still a considerable number of discussions on-going about the draft environment bill, which is probably further behind the Agriculture Bill and the Fisheries Bill. We are not really any further forward with any of the three; and they are all pretty central to what we are doing.

11:45

**John Scott:** In a nutshell, those would potentially delay your legislative programme.

**Roseanna Cunningham:** No, we are not taking that view. We are taking the view that we will press ahead with things that we consider need to be done in the timescale within which we need to do them. Undoubtedly, some of it does have an impact; all of it has a bit of an impact. However, we are not planning on slowing anything down unless we have no alternative.

**Michael Russell:** For the record, earlier I mistook Don McGillivray for a constituent of mine named Duncan McGillivray. My apologies to both of them, if either of them is offended.

I echo what Roseanna Cunningham has said. I do not necessarily want to go any further than that, except to say that, at the moment, there is a legislative black hole at Westminster. Nothing is happening; nothing is moving forward. In those circumstances, our view is that we must be as well prepared as we can be. It is uncertain what will take place next. Until the Sewel issue is resolved, the Scottish Government will not recommend consent to any of that legislation. On several occasions, we have made proposals to resolve it, but those also disappeared into the black hole—without even a photograph of it!

**Roseanna Cunningham:** On current information and understanding, unless changes are made, we would insist that there had to be a legislative consent motion for the environment bill.

**John Scott:** We should move on.

**Stewart Stevenson:** For months and months in Parliament we have been discussing what will happen in the case of a no-deal exit and, today, we are discussing it again. In the case of no no-deal exit, how prepared are we?

**Roseanna Cunningham:** What?

**Stewart Stevenson:** In other words, if the exit is not a no-deal exit.

**Michael Russell:** We have not overprepared for no deal, so we remain prepared for a deal, but the

deal that is presently being offered by the Prime Minister—I have said this before—is virtually as bad as no deal and requires a great deal of preparation. We do not wish for that outcome.

At the very start, in December 2016, in “Scotland’s Place in Europe”, we proposed a solution, which was to remain within the single market and the customs union. I remind members that, at that stage, that had not been ruled out by the Prime Minister. The following January, in her Mansion House speech, she ruled it out. Since then, we have continued to argue for that as a rational outcome. However, we are now beyond that, because the chaos is indescribable and the time that it would take would be considerable.

We now believe strongly that the right approach is to halt Brexit, revoke article 50 and, if necessary, have a referendum. At the moment, revocation would be our best option and we will continue to argue for that. However, if the UK departs the EU, deeply as I would regret that, we will be ready and prepared to do what we can to mitigate the undoubted considerable damage—and ready and prepared to re-enter the EU as an independent Scotland as soon as we can.

**Stewart Stevenson:** Therefore, the only activity that we can be certain will happen at Hallowe’en is that some people will be looking for apples.

**Michael Russell:** It is important to note that timescale, which people have lost track of because of the sense of relief that, at least, there was not no deal. The agreement says that if the withdrawal implementation bill is ratified and passed, the UK will leave on the first of the following month. Most commentators believe that a six-week period will be necessary for the implementation bill, which, in my view, now rules out 1 June. Therefore, the European elections will almost inevitably take place. I cannot see them not taking place, unless there is a pauchle. The UK Government could pauchle it, but we will see what happens. Given the timescale, 1 July is quite difficult. If the Government could do it, 1 August might be possible, but I would have thought that any Government—looking at it and thinking of people’s holidays—would be nervous about implementing such arrangements in the middle of the English holiday period. That then means that we have only September and October.

It is not a long period of time, and at the present moment there seems to be little prospect of ratification. Whether ratification can come about as a result of the withdrawal implementation bill going to the House of Commons—which is an unconventional method of ratification but is being talked about—is another matter.

There has been no visible progress during the month of April. We are now about to go into May, and there is still none.

**Stewart Stevenson:** The First Minister has said that the Scottish Government is scaling down on no-deal planning. Therefore, what is it doing in relation to exit, if it is not no-deal planning? Is it redirecting its effort to other legislative and policy development priorities?

**Michael Russell:** The resilience committee has not met for the past few weeks; previously, it was meeting weekly. It is recalibrating the various options and discussing the next steps with individual ministers, which it will also discuss as a committee and with the cabinet.

Roseanna Cunningham can tell the committee what she is doing on the detail of her portfolio, but that is the cross-Government position.

**Roseanna Cunningham:** Regarding no deal, we have continued to work on some of the key areas that we had raised in previous sessions. From our perspective, chemicals, waste, water and the EU ETS issue were the four key areas that impacted on us.

Some of that work will still be germane to a deal, and useful and helpful, but, of course, if there is a deal—I am not sure what that deal will look like, or of its time scale—there will be a transition period on the back of it. The anxiety about no deal was that it would have meant no transition; we would just have gone off the cliff edge. Whatever a deal might or might not look like, we will have a transition period, which presumably will give us some ability to make adjustments that have not already been made.

However, some of the no-deal preparation is also relevant to the uncertainty of any deal happening. We would not want to characterise everything that has been done as no-deal preparation as wasted time, because it will not have been; much of it will help us in that longer period if there is a deal.

The uncertainty around it is the biggest problem. We have a real issue because nobody knows what is happening. For example, the water industry had made sure that it had stocks in to ensure that water would be purified. What is our next crunch point? Everybody is having to think forward in that way, and that will permeate not just the areas of this portfolio that will be impacted but all portfolios.

**Stewart Stevenson:** Cabinet secretary, you specifically mentioned chemicals, the waste sector and water in your previous response. When we had the Chemical Industries Association before the committee, it highlighted some of the particular concerns that smaller companies have in relation to chemicals, and the uncertainties that surround

what preparations they can and should be making. How is the Government seeking to support small and medium-sized enterprises in particular, because it is not simply about Government being prepared but about the wider economy?

**Roseanna Cunningham:** Work is being done. We have set up a prepare for Brexit website that is hosted by Scottish Enterprise, of which most of you ought to be aware. For businesses that are able to access that, there is an online self-assessment tool kit that will give them a sense of where they are currently at, information and advice and the ability to book on to learning events and to apply for grants. That is the level of ability to interact that we have tried to put in place.

One of the difficulties is reaching the very small enterprises that nevertheless may have very outwards-focused business. We will continue to try to have that conversation with them. Reaching those businesses can be challenging, although those that are most exposed to the issues of exporting and importing will have self-identified and are the most likely to have accessed the information that we have provided.

That work is with private businesses but, as I indicated earlier, we also continue to work closely with SEPA and SNH with regard to waste and chemicals; that has not stopped. The removal of the imminent cliff edges on 29 March and 12 April has allowed a little breathing space, but we are conscious that there is now another potential cliff edge on 31 October.

**Stewart Stevenson:** My final question is about the awful lot of Government resource that has gone into Brexit planning. Have you had sufficient financial and other support from elsewhere for that, or is it likely to impact other programmes?

**Michael Russell:** You would be surprised if I said that we had; we have not. A reckoning and accounting of what precisely we have spent is being done. There is involvement right across the public sector—local authorities, of course, and public bodies, as Roseanna Cunningham has indicated—and with a range of organisations and the private sector. We will seek recompense for those sums, because we have operated on the principle that there should be no detriment to the public finances as a result of Brexit—we did not vote for it and it should not happen. That principle has not yet been accepted by the UK Government, but we will continue to argue for support.

**Mark Ruskell:** I turn to the REACH etc (Amendment etc) (EU Exit) (No 2) Regulations 2019 that we will consider later under agenda item 4. I understand that the regulations have been through two revisions, to extend the transitional arrangements and to deal with concerns raised by



industry about the supply chain. Are you confident that the regulations are fit for purpose?

**Roseanna Cunningham:** I am not sure that I would use the word “confident” about anything in the Brexit landscape. As best we understand it and as far as we are aware, all outstanding issues have been addressed. Amending statutory instruments were made to ensure continuity of the supply chain, after feedback from industry stakeholders, along the lines that you have spoken about. Although the word “confident” would be overstating it, as far as we can understand, the issues have been addressed.

I have kept asking questions about this area—Don McGillivray will attest to that. I am conscious that there have been concerns about the information technology system that is being put in place and whether it will be fit for purpose. I am trying to keep on top of this area, in particular. I think that people do not understand the extent to which it underpins so much of the economy. Confident? No. To the best of our understanding? Yes.

Don McGillivray may wish to add to that.

**Don McGillivray:** You have expressed the issue very well, cabinet secretary.

**Mark Ruskell:** Fresh issues keep emerging with regard to the regulations. Last week, at Westminster, the potential for increased animal testing was raised, should there be a need to duplicate testing requirements in the UK regulations, in addition to the testing that has already taken place for the European REACH system. Twelve MPs in a cross-party group wrote to Thérèse Coffey to ask the UK Government to rule out the requirement for increased animal testing and any duplication of tests. What is the Scottish Government’s position on that? Are you concerned, and have you made any representation to UK ministers?

**Roseanna Cunningham:** In truth, that is the first that I have heard about that issue. I wonder whether it has surfaced with Don McGillivray. One problem that we have is that things often surface unofficially and informally. Although I can keep track of everything that surfaces on Twitter, things do not always appear on Twitter. Don McGillivray has indicated that he thinks that he might know something about the matter.

12:00

**Don McGillivray:** I was not aware of the activity at Westminster last week, but I think that I am aware of the background to the issue. In transitioning from the EU database to the UK database, UK companies, or the UK agents of overseas companies, will have to provide

information for that UK database. That information is sometimes held by other people and it is commercial information. The UK companies will have to negotiate access to it and they may even have to pay to access it.

The NGOs want to know what would happen if the UK companies could not access the information. Would they have to retest? Would that mean more animal testing?

I believe that the supply chain will sort out the issue, that there will be a negotiation and that there will be access—possibly at a price. This is probably largely a money issue, or an issue to do with accessing commercial information that will need to work itself through. Certainly, our strong belief and objective is that we should not end up in a place where there would have to be additional animal testing to overcome the issue.

**Mark Ruskell:** Have you communicated those thoughts to the relevant minister at Westminster?

**Don McGillivray:** Those at official level are certainly well aware that we would be very concerned if we ended up with additional, unnecessary animal testing.

**Mark Ruskell:** Given that this has been a surprise to you, it would be useful to get a bit more reflection on what actions you can take as a Government to raise concerns. I understand that the issue is to do with data confidentiality requirements, but surely it is Government’s role to lead, rather than just to let the market decide.

**Roseanna Cunningham:** The situation is symptomatic of what is surfacing all over the place. The unknown unknowns are beginning to be known. Those are the things that would have been very difficult to anticipate prior to their surfacing. I suspect that that will happen more and more.

**Mark Ruskell:** Yes. I am not making a criticism—I understand that the situation is just a nightmare.

My last question on REACH is a little bit more fundamental. There will be a shift from a very open system—we have decision making between the European Commission and the European Parliament, with stakeholder expert groups involving academics, industry, ENGOs and others working together—to a very closed system, with no stakeholder involvement at all. What is the Government’s position on that?

You want us to support the REACH etc (Amendment etc) (EU Exit) Regulations 2019. When the Scottish Environment Protection Agency was before us last week, it indicated that, if it were directed to, it could perhaps involve stakeholders more in discussions about the development of chemical regulations.

I see a real loss here—we would lose something that is an intrinsic part of European decision making. How do we work around that? How do we not lose that architecture of expert advice and support?

**Roseanna Cunningham:** One challenge in this area was the almost impossibility of replicating, at a Scottish level and in the available time, the appropriate regulatory system that you would have had to have in place. Therefore, we were confronted with one of those areas where we had little option but to try to have the conversations at the UK level.

We are absolutely of the view that any UK chemicals regime should be based on strong science and that it should also be transparent. I suspect that this will be one of the continuing areas where there will be a disjunct between how we see things should go forward and how they may go forward.

I do not think that the situation is ideal. You would hardly expect me to say anything other than that, if it had been possible, we should just have had our own system. As far as we could assess it, however, that would have been impossible on the basis of what was then understood to be the no-deal timetable. We are where we are.

**Mark Ruskell:** Is there a danger that that will become a permanent way of working? That would mean losing the expert groups and so on.

**Roseanna Cunningham:** That takes us back to the earlier conversation. We need to be conscious that there is always a danger that some of the interim arrangements will become permanent.

**Mark Ruskell:** What could SEPA do? Could it run a shadow expert group in Scotland that involves industry and stakeholders? Could we not take the lead?

**Roseanna Cunningham:** I have not discussed the issue with SEPA, so I will not commit SEPA to anything that, in truth, it might not be resourced for or capable of doing. Given what the committee has said, we will ensure that we talk to SEPA about what space it thinks it can work in.

**Don McGillivray:** The other question that arises is what stakeholder engagement structures will be in place at UK level. Some features of the current chemicals regime at UK level involve stakeholders. For example, there is a chemicals stakeholder forum that involves stakeholders discussing chemicals policy at UK level. That work has certainly been done in the past. The question is how that will relate to the specific regulatory regime.

What was the function of the EU committees? My understanding is that they were advisory committees. There might be a difference of

opinion, in that the UK Government saw the committees as a way of brokering advice across the 27 EU member states, whereas some of the NGOs saw them more as a way of engaging stakeholders. That is where the crunch has come. There is a need to resolve that difference of opinion and to try to come to a common understanding of the function of the committees and how best to involve stakeholders in the process.

**Michael Russell:** I know very little about the specific issue—the expertise is with Roseanna Cunningham and Don McGillivray, who are sitting to my right. However, I make the point that, although I would like to mitigate every bit of damage that Brexit will cause, that is impossible. Brexit is not a good idea and will cause damage, whatever iteration it takes—soft or hard. The resources to mitigate Brexit are simply not available to us. With our current set of resources, that is simply not possible to do.

The keeping-pace powers in the continuity bill would have allowed us to move forward. In discussions with Mark Ruskell's party, as well as the other parties, we have agreed a way in which we would like to bring back such powers. I think that the limitations on the powers in the continuity bill will probably dissolve a bit, because we want more of those powers. However, it would be wrong to assume that, for every detail in every part of our national life, we can mitigate, shadow or change what is happening with Brexit. Regrettably, we cannot do that. To get out of Brexit, we need to ensure that it does not happen or that we get out of the UK.

**The Convener:** There is also the fact that the REACH regulation took many years to develop, and we do not have many years in which to develop something similar.

**Michael Russell:** Exactly.

**Roseanna Cunningham:** We cannot do something with just a click of the fingers.

**Angus MacDonald:** Since last week, the committee has looked at the situation regarding Switzerland and REACH. Switzerland is a member of the European Free Trade Association, but is not a member of the European Economic Area or covered by REACH. It could not come to an agreement with the EU on the stipulations in relation to REACH. Switzerland investigated being covered by REACH, but it found three conditions set by the EU to be unacceptable. First, it did not accept the supervision of the European Court of Justice—or, I presume, the EFTA court that EEA countries use. Secondly, it did not accept adopting all REACH decisions on chemicals without there being a vote in the process. Thirdly, it did not accept adopting the other EU regulations that work

with REACH to protect human health and the environment.

We can assume that the UK would be presented with the same conditions if it wanted to remain covered by REACH while remaining outside the EU and the EEA. Should we find ourselves in the EEA or EFTA, I presume that you would encourage the UK Government to remain covered by REACH, rather than to proceed with REACH UK, which may or may not be fit for purpose.

**Roseanna Cunningham:** Yes. I take the same view on the issue as I took with the EU ETS. It would be far better to stay in the scheme, rather than having to set up an ersatz version of a scheme that has been working well. I would say the same for REACH and any similar scheme.

It goes back to the fundamental point that, frankly, we have what is best and fit for purpose but appear to be leaving it. Whatever we design will not be as good as that. We should remember that everything is being designed around there being no deal. Whatever relationship we have post-Brexit, we should do our best to have the best deal possible that will keep us within the ambit of what is already there. However, we would be in the extraordinary position of having got ourselves out and then, in effect, having to negotiate to get ourselves back in again.

**Claudia Beamish:** This broad question is for both cabinet secretaries. We have touched on some of the environmental governance and principles, but not so much on enforcement arrangements. As we know, the Scottish Government committed, in the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill, to maintaining the environmental principles—my colleague Mark Ruskell and I were involved in the bill process with amendment 39—despite the Supreme Court decision on the bill. Mark Ruskell might have a further question on the matter, but can you comment on any time frames for legislation and the scope of proposals here in Scotland?

**Michael Russell:** Yes. I wrote to the Presiding Officer three or four weeks ago as a result of discussions that had taken place between the parties. This is therefore not ex cathedra comment from the Scottish Government, because we had a discussion about how we would take the bits of the continuity bill forward that were deemed to be possible to take forward. There are broadly two avenues that could be followed: first, there could be a reconsideration stage for the bill. That has never been done previously in this Parliament, because a bill has never been challenged for its competence. That would have been quite a narrow way forward because the relevant standing orders were written in 1999 at the outset of the Parliament and would have allowed us to take only

the exact terms of each item and do them again. However, things have moved on and Brexit is, if anything, a constantly changing scene.

We therefore agreed as a group that we would try to bring forward certain things but might want to add, build on and develop them. We can take broadly three sets of items. First, there is one item that the Supreme Court decided was out of scope and which would clearly fall. It is a very minor item and is the same as an item that exists in the equivalent Welsh bill. Secondly, a range of items in the bill were in scope but were ruled out of scope by subsequent UK legislation—one must regard that as a legislative sleight of hand by the UK Government—so we would need to look at those again to see what we could do with them and how we can rephrase or repackage them, if we can. Thirdly, there is a range of items, including environmental governance, the keeping pace power and one or two other items, which we would like to bring back either through a standalone bill—we have committed ourselves to such a bill for some of those items—or through other legislation if that was the relevant way to do it.

Presently, we are working up the ideas into what that legislation would look like. We will, of course, continue to consult the other parties, which we did as much as we could during the process of the continuity bill. I remember the discussions that we had about amendment 39 and I admire Claudia Beamish for remembering the number of the amendment, as I am afraid that that has all gone out of my mind now. However, as I said, we will consult about the legislation and see what we can bring back.

The detail around what we will do with environmental governance will be entirely up to Roseanna Cunningham and her team, but the vehicle might well be the bill to which I have referred. However, we will continue to develop that legislation.

**Roseanna Cunningham:** Basically, we have taken the purpose and intent of certain parts of the continuity bill as if they had already been implemented and are doing the consultation that was meant to happen within six months of royal assent for that bill. We have just gone ahead with that, which is a current conversation that will inform what could go into the bill. At this stage, I cannot say exactly what that would look like.

**Claudia Beamish:** The UK Government has done work towards setting up an office for environmental protection in advance of knowing what the exit scenario is. Is work being done here to set up a complementary body or something like it?

12:15

**Roseanna Cunningham:** We are waiting for the outcome of the consultation to decide what will be appropriate here. Westminster consulted on the setting up of the OEP, although it approached its consultation in a different manner by deciding on an outcome and consulting on it. That is the one that we got at about 4 o'clock on the day before the consultation was published, and Wales and Scotland asked it to remove references to Wales and Scotland, which is why it is the way it is just now.

Neither Wales nor Scotland is approaching this from the point of view of having discussions about participation in that body. Interestingly, Wales has consulted in the same way that we have consulted, rather than making a decision and then consulting on it.

I am not convinced that the OEP will work out quite as well as Michael Gove might think it will.

**Claudia Beamish:** Do you have any comments on the concerns about governance gaps if there is no deal, or during a transition period?

**Roseanna Cunningham:** There will be some things that we can move to quite quickly. The lack of clarity and on-going chaos makes it extremely difficult. We are just going to work through our processes.

We are looking at what some interim measures might look like if there is no deal. Some mechanisms are already available, although the extent to which people understand them is less certain. We are having a look at some proportionate interim measures in the event of no deal but we are not designing an interim big bang because that is not how we are approaching this.

**Mark Ruskell:** I want to move us on to look at the draft UK Environment (Principles and Governance) Bill. Could the cabinet secretaries outline their top-level concerns about the way in which it has been drafted?

**Roseanna Cunningham:** We do not have it all. Draft clauses were published in the run up to Christmas to allow for the consultation on the OEP, but there are other things in the bill, most of which we do not regard as impacting on us. There are, however, some references to reserved matters, although they are not really defined, and that is one of the struggles that we are having with Westminster. As I said earlier, if Westminster does not move on that, a legislative consent motion would be required for us, but it would not really be on those specific matters.

My understanding is that the intention of the bill is to legislate formally for the OEP, but some other things might be ladled into it. The deposit and return scheme is one thing—I am looking at

Katriona Carmichael to see whether I am right. Although the bill is not actually about devolved policy making, some references have given us concerns, but, if I am right, they are not about specific policies.

**Katriona Carmichael (Scottish Government):** The UK Government will create a wider environment bill. So far, the only aspects that have been published are the provisions about environmental principles and governance.

**Roseanna Cunningham:** We hear about things that might go into that wider bill but we do not know what they might be.

As I have said, some of the drafting on which matters are to be either devolved or reserved is already giving us cause for concern, so we are not getting much traction yet. To be honest, the work on that has stalled completely—not much is happening. At yesterday's meeting in Cardiff, I did not gain any real sense that we could expect an environment bill at Westminster any time soon. Of course, officials often have conversations with their counterparts, so they sometimes know a little bit more than ministers do.

**Katriona Carmichael:** There are on-going discussions at official level about wider aspects of the bill, which we understand will encompass areas on producer responsibility and possibly measures on water quality. We are currently working to establish the full scope of the bill as the UK Government understands it.

**Mark Ruskell:** We will also have Michael Gove at the committee in a week or two.

I would like to ask about executively devolved functions in relation to the offshore wind industry, which is hugely important in decarbonisation and in promotion of a green new deal. If there were to be a complaint about an offshore wind farm, might the proposed OEP step in and say, "Hang on a minute—this is our remit. We've had a complaint, so we'll investigate it"?

**Roseanna Cunningham:** You would need to ask that question of Michael Gove.

**Mark Ruskell:** Okay. I will write that down for our next meeting.

**Roseanna Cunningham:** I am sorry—I genuinely do not know the answer to the question. It is one of the things that we will try to establish, and it is also one of the reasons for our being so wary about the way in which the UK Environment (Principles and Governance) Bill is drafted. We need to understand exactly what the UK Government thinks should happen. One bit of phraseology that is in the briefing that I have received—which I do not have in front of me—is that areas of "reserved environmental policy" are yet to be established. The UK Government is

trying to insist that there might be some such areas, but it will not confirm in concrete terms what it has in mind.

**Mark Ruskell:** Yes—

**The Convener:** We will have a very short question from Claudia Beamish.

**Claudia Beamish:** I have a brief question about enforcement arrangements. Will either of the cabinet secretaries comment on whether it is intended that Scotland will legislate for, or establish, an independent watchdog with powers that are parallel to those of the EU? Will you update us on that complex issue?

**Roseanna Cunningham:** I am sorry—I am not entirely clear what you mean by that, so my answer is probably no.

**Claudia Beamish:** As regards an environmental watchdog—

**Roseanna Cunningham:** On environmental policy?

**Claudia Beamish:** Yes. My question was about environmental policy. I am sorry—perhaps I was trying to be too brief. Will you share with us your thinking about how that is progressing? The committee has taken a lot of evidence on whether environmental policy should be UK wide.

**Roseanna Cunningham:** A decision on that will emerge from the on-going consultation. At this point we are not preparing for any such thing. I take it that you mean something equivalent to the proposed OEP.

**Claudia Beamish:** No—I mean something like the European Court of Justice.

**Roseanna Cunningham:** It is intended that the proposed OEP will replace the European Court of Justice, for England.

**Claudia Beamish:** Yes, but I am interested in something that would be specific to Scotland. Have you any thoughts on that?

**Roseanna Cunningham:** Discussion on that should take place in the consultation process.

**Claudia Beamish:** That is fine. Thank you.

**Angus MacDonald:** I am conscious that time is wearing on, so I will turn to EU funding and support structures. Last week, we discussed horizon 2020 and the forthcoming horizon Europe. To put that in context, when the committee visited Brussels some time ago, it met the Norwegian delegation and we learned that Norway has been particularly successful in tapping into horizon 2020. Will our witnesses update the committee on what the Scottish Government is doing to clarify the situation on potential loss of sources of EU funding? What are the current funding guarantees,

and what is the Government prioritising in securing EU funding post-exit?

**Roseanna Cunningham:** We keep on trying to raise the issue: it was one of the items on the agenda for yesterday's meeting, so it is the subject of an active conversation. We continue to press the UK Government to fulfil the commitment that it made—in absolutely direct and unambiguous terms—to replace all the EU funding. As yet, we have no certainty around that.

To be fair to my colleagues in the Department for Environment, Food and Rural Affairs I say that they are probably looking for exactly the same certainty. The difficulty is that everything is being driven by the Treasury. I think that there might be frustration even at the level of departments in Westminster; I am pretty sure that they, too, want an answer to the question.

We have had absolutely no clarification, but we continue to raise the issue. As I said, it was part of yesterday's agenda, so I can update you by telling you that there has been, regrettably, no movement on the matter, and that all that is happening is that we are continuing to raise the issue, in particular with ministers who, themselves, would like some clarity. They are having to deal with the same issues in England: I dare say that they have stakeholders that are every bit as unhappy as those in Scotland and Wales.

**Michael Russell:** This afternoon, I will meet representatives of a body that will undoubtedly—as everyone does—raise with me the issue of replacement funds. We can approach that in three ways. The first is to say that there are funds, including horizon 2020 and Erasmus+, in relation to which we know that the UK Government has conducted a value-for-money exercise—on its own terms, and not on anyone else's—and has not yet finalised its conclusions. However, we understand that, for example, the policy choice of the UK Government is to continue to be a member of horizon 2020, which will require the UK to pay into the fund, but it proposes that we will not continue to be a member of Erasmus+, which it believes does not provide value for money. We entirely reject that view, but it is the UK Government's thinking, which we hope will change.

The second approach involves a shadow funding structure. A shared prosperity fund has, allegedly, been established. However, there is no information about how it will operate. James Brokenshire's department is supposed to be conducting a consultation exercise on that, but it has not started yet. It is possible to find bits of information: for example, we can assume that something that is currently funded by the regional development fund will be part of the shared prosperity fund, because the regional development

funding is being folded into that. However, we have no certainty that that will be the case.

The third approach involves pretty much what I was saying to Mark Ruskell earlier. We cannot manage or administer our way out of this complete boorach: it is impossible to do so. On Claudia Beamish's suggestion to establish an environmental watchdog, I say that we cannot just replicate the good things that have come out of the European system and which have resulted in huge progress. Firstly, that would not work and, second, we do not have the money to do it. We have no idea how much money will be available: the funding issue prevents our knowing that.

A very long time ago—a decade ago—I was the minister with responsibility for the environment, and I was involved in setting up and administering the Scottish rural development programme system, during which time we moved from one payment system to another. We had known that we would be moving and we knew what that would involve, but it still took six to nine months under the new system for money to start to flow, after it had stopped flowing under the original scheme. I know, because he asked questions about it at the time, that John Scott will remember that. The proposition that we are discussing now is of a much larger scale, and we have no idea what sort of money is involved.

It is hard to exaggerate the extent of the implosion of the UK Government on these matters and on the whole matter of Brexit. There is, to all intents and purposes, no functioning Government in Whitehall, rather, there is a Government that is focused entirely on Brexit and the chaos of Brexit. The legitimate questions that the committee is asking today are essential ones for every third sector body, for all bodies in the environmental sector, for every business and for the whole of society. However, there are no answers to them. It is distinctly possible that the UK will leave the EU any time now. What is happening is an act of gross irresponsibility that is causing huge damage. I wish that we could mitigate it in the way that is suggested, but that cannot be done.

**Angus MacDonald:** Is it fair to say that the Scottish Government has had no opportunity to offer input in development of the proposal for the shared prosperity fund?

**Roseanna Cunningham:** I have to say that, as far as we can assess, only the phrase “shared prosperity fund” exists. There is nothing behind that, at the moment.

**Michael Russell:** The phrase appeared in the Conservative Party manifesto in 2017. Apparently, a consultation is being carried out. There are bits and pieces on websites, but what the fund is going to be and how it will operate are unknowns. The

constant spin about it is that it will be a central fund that will be administered from London. The secondary spin is that it will give power to the Secretaries of State for Scotland and Wales and be administered through them—which is one in the eye for the devolved Administrations. That is the level of consultation on something so vital.

12:30

**Angus MacDonald:** What analysis has the Scottish Government done of the importance of participation in the various EU-level bodies, such as the European Environment Agency, that support environmental policy and implementation?

**Roseanna Cunningham:** We have not done such an analysis, because our view from the outset has been that we need to continue to be involved with those bodies. That issue was raised at the DEFRA DA meeting and supported by my Welsh counterpart Lesley Griffiths. Continued participation in the European Environment Agency is absolutely vital for Scotland.

The agency was set up for participation by member states, so there would be a question about whether a devolved Administration could have a separate relationship. Yesterday, I urged the UK Government to consider signing up, which we have urged before. I am not sure of the phraseology, but there is a capacity to sign up as to the agency a third-party state: it is absolutely a given that the UK should do so. I raised with officials questions about whether Scotland's devolved Administration could sign up, even if the UK does not do so, but I am not certain about the answer. However, I am strongly of the view that we should be able to do that, particularly if we are to keep up with developments at EU level.

The issue is how to ensure that we are networked into matters when they begin to develop. Being committed to keeping up with EU developments is one thing, but it becomes difficult for us when such matters are found out about via press releases after they have been decided. There would probably have been a number of years of careful consideration of issues before that point was reached. We need to be involved with as many such EU organisations as possible in order to ensure that we continue to be part of the conversations. I impress on the UK Government, as I have done in respect of the EU ETS, that the most sensible thing to do is stay in.

**The Convener:** We are rapidly running out time. Angus MacDonald has a final question.

**Angus MacDonald:** Last week we heard how important EU funding from structural funds and the European Investment Bank is for the circular economy. How can the Scottish Government ensure that investment in the circular economy is

maintained? Are you considering how to prioritise it for the proposed new Scottish national investment bank?

**Roseanna Cunningham:** I cannot make such financial commitments. It is intended that the new national investment bank will have a mission-based approach to investment, so there will be strategic direction and a set of medium-term outcomes that will be ministerially driven. I know that officials are already engaging about the potential for investment in innovation and infrastructure around the circular economy, because that is an absolutely vital part of Scotland's economic development. The First Minister has said publicly that a key mission for the bank will be to support the transition to a carbon-neutral society, which one presumes will have to have the whole circular economy idea beneath it. You will appreciate that I am not the minister who will be taking forward the national investment bank; for exquisite detail, you had probably best ask Derek Mackay.

**The Convener:** I thank everyone very much for their evidence. We have run out of time—in fact, we have gone over time.

12:34

*Meeting suspended.*

12:36

*On resuming—*

## **European Union (Withdrawal) Act 2018**

### **Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019**

### **REACH etc (Amendment etc) (EU Exit) (No 2) Regulations 2019 (SI 2019/858)**

**The Convener:** The fourth item on the agenda is to consider a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to two UK statutory instrument proposals. Are there any comments on either instrument?

**Claudia Beamish:** In relation to the EU directives regulations, I have gained some comfort from the fact that there are obligations on the UK Government to come to the Scottish ministers. For example, in relation to the marine environment, it would have to do so on inshore waters issues and any other issues that would affect the devolved Administration. I take some comfort from that approach.

**Mark Ruskell:** The evidence session that we have just had with the cabinet secretaries was useful, but it did not reassure me in relation to the REACH regulations, which will, in effect, dismantle the whole architecture of European policy making on the issue. The regulations will remove the role of stakeholders, including civic movements, that are protecting the environment, and the roles of industry, academics and experts in formulating policy. That will be a huge loss, and I did not hear from the cabinet secretary a commitment to try to replicate that in some way. We would never be able to replicate it completely, but based on the evidence that we heard from SEPA last week, it seems to have an appetite to engage with experts and, at the very least, to feed that into the process, which will now be governed by the Health and Safety Executive.

I am concerned about the status of the REACH regulations. They have been revised twice already, and in my view the new regulations are not competent. New issues are coming up all the time, including animal testing, which was raised today and seems to be another area of which the UK Government has been unaware. I understand that—the situation continues to unfold, with new unintended consequences appearing week on week. Right now, I do not want to support the regulations, which are not fit for purpose.

**Stewart Stevenson:** Given that the regulations have been laid by the UK Government, our position is almost irrelevant. More fundamentally, I wish to note, because no more can be done, that sending notification of an instrument on 28 March when it is to be implemented on 29 March—or, for that matter, on 12 April—is simply an unacceptable way to proceed.

**The Convener:** Do members have any other points? I think that we all agree that the lack of scrutiny time—even more so for these regulations—has been a real problem throughout the entire process, as we have prepared for a no-deal Brexit. It looks as though we will have to go to a vote.

First, however, we will deal with the legislative functions regulations. Does the committee agree to the Scottish Government's proposal to consent to the UK Government legislating in relation to the Environment (Legislative Functions from Directives) (EU Exit) Regulations 2019?

**Members indicated agreement.**

**The Convener:** Does the committee agree to the Scottish Government's proposal to consent to the UK Government legislating in relation to the REACH etc (Amendment etc) (EU Exit) (No 2) Regulations 2019?

**Members:** No.

**The Convener:** We will go to a vote. Will members who agree to the proposal raise their hands? Okay. Will members who disagree to the proposal raise their hands? Is Angus MacDonald abstaining?

**Stewart Stevenson:** What about you? What are you doing?

**Lynn Tullis (Clerk):** I am sorry, but I am not entirely clear about the vote.

**The Convener:** Will members who agree please indicate their votes again?

**Lynn Tullis:** That is Stewart Stevenson, Claudia Beamish and John Scott.

**The Convener:** Mark Ruskell disagrees with the proposal and Angus MacDonald is abstaining.

**Stewart Stevenson:** Are you taking the fourth option, which is not to register a vote?

**The Convener:** To be honest, I am not sure how I want to vote. I share concerns, so I will abstain.

#### **For**

Beamish, Claudia (South Scotland) (Lab)  
Scott, John (Ayr) (Con)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

#### **Against**

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

#### **Abstentions**

MacDonald, Angus (Falkirk East) (SNP)  
Martin, Gillian (Aberdeenshire East) (SNP)

**The Convener:** The result of the division is: For 3, Against 1, Abstentions 2.

The proposal is agreed to.

That concludes the committee's business in public. At its next meeting, on 7 May, the committee will take evidence on tax and fiscal measures to inform its work in relation to the Scottish Government's budget.

We now move into private session. I ask that the gallery be cleared.

12:42

*Meeting continued in private until 12:43.*



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