



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy, Energy and Fair Work Committee

**Tuesday 25 June 2019**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**ECONOMY, ENERGY AND FAIR WORK COMMITTEE**

**22<sup>nd</sup> Meeting 2019, Session 5**

**CONVENER**

\*Gordon Lindhurst (Lothian) (Con)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)

\*Colin Beattie (Midlothian North and Musselburgh) (SNP)

\*Angela Constance (Almond Valley) (SNP)

\*Jamie Halcro Johnston (Highlands and Islands) (Con)

Dean Lockhart (Mid Scotland and Fife) (Con)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Andrew Hogg (Scottish Government)

Derek Mackay (Cabinet Secretary for Finance, Economy and Fair Work)

David Pratt (Scottish Government)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Economy, Energy and Fair Work Committee

*Tuesday 25 June 2019*

*[The Convener opened the meeting at 09:45]*

### Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning and welcome to the 22nd meeting in 2019 of the Economy, Energy and Fair Work Committee. I ask everyone to turn electronic devices to silent.

Item 1 is for the committee to decide whether to take items 3 and 4 in private. Do members agree to do so?

**Members indicated agreement.**

## BiFab, the Offshore Wind Energy Sector and the Scottish Supply Chain

09:45

**The Convener:** Item 2 is BiFab, the offshore wind energy sector and the Scottish supply chain. For this part of the meeting we have before us Derek Mackay, who is the Cabinet Secretary for Finance, Economy and Fair Work; David Pratt, who is the head of planning and strategy at Marine Scotland; and Andrew Hogg, who is deputy director for energy industries at the Scottish Government. The Cabinet Secretary will make a brief opening statement.

**The Cabinet Secretary for Finance, Economy and Fair Work (Derek Mackay):** Thank you, convener. I appreciate the committee's on-going interest in BiFab and the Scottish supply chain, and I appreciate this opportunity to share with you some of the work that we have been doing. I am mindful that we had a parliamentary debate in May, which helped to raise awareness of some of the actions that have been taken.

On BiFab, we have tried to be as supportive as possible from the point of its acquisition 14 months ago, and to ensure a sustainable future for the company. I remain cautiously optimistic that contracts will be secured for BiFab, but of course we need to ensure that the benefits reach the wider renewables supply chain in Scotland.

I held an offshore wind summit on 2 May, at which I emphasised the importance to the sector of utilising the Scottish supply chain in the build-out of projects. I targeted that at developers and tier 1 company representatives who attended.

Areas that we are exploring—I touched on this in the parliamentary debate—in order to increase supply chain work and Scottish content, and to incentivise better behaviour here, include work with Crown Estate Scotland and work on how the Scottish Parliament reviews and approves decommissioning plans. Since the summit, the industry and the sector have made commitments on exploring collaboration and working more closely with the supply chain. I am sure that the committee will be aware of the Offshore Wind Industry Council's announcement yesterday of a four-month in-depth analysis of the capabilities of the fixed-bottom foundations market in the UK, with a focus on the requirements of buyers.

So, we are working with companies in the sector on the commitments that they have made to us. I intend to reconvene the summit. I invite the convener, or other appropriate representative of the committee to that summit, which will probably

take place later in the year. I recognise that we are all in agreement that we want greater benefits to come to Scotland—in particular, the industrial benefits of the renewables sector, of which we have been so supportive.

**The Convener:** Thank you, cabinet secretary. On your last point, I do not think that I or any committee members were at the first meeting, although the committee had requested that opportunity.

**Derek Mackay:** That is right. I am happy to explain why I felt that that would not have been as helpful at that point as it might be now.

**The Convener:** It might be helpful to hear that explanation.

**Derek Mackay:** At the summit to bring together developers, I wanted to express to them very clearly the Scottish Government's disappointment about the lack of Scottish content, supply chain benefits and industrial benefits—in particular, in fabrication—considering the support that we have given to renewables. I also wanted to do that in a way that would drive good behaviour and best practice. The trade unions wanted the summit to go ahead, of course, and I wanted also to involve the UK Government. I therefore had a private call with Claire Perry, Minister of State at the Department for Business, Energy and Industrial Strategy, who committed to attending—although in the end she could not attend, but sent officials.

I wanted the summit to be a good place at which to have a frank conversation about our disappointment, and then to get on to actions that could remedy the situation. I feel that I have absolutely made that point to the sector; I had been doing it with people individually, but I wanted to do it collectively, with everyone in the room, including the trade unions, which were represented at the summit.

At the next summit, we need to consider actions and what has been delivered. I am happy for the committee to be represented at that. However, I wanted the opportunity to be very direct with the sector, as I have been.

**The Convener:** Others might want to come back to that.

Can you tell us specifically what options the Scottish Government has been following to ensure more benefit to the Scottish economy and more use of Scottish firms in the offshore wind sector? You mentioned that you discussed specifics at the summit. Can you share with us some of the specifics on what the Scottish Government is doing?

**Derek Mackay:** Since I came into post, we have been exploring possibilities. A lot of people genuinely raise issues about whether the planning

regime can be used. It cannot be used to nail down guaranteed local supply chain content. Can the consenting regime be used? No. We are advised that it, too, cannot nail down the supply chain benefits that we are trying to deliver.

We looked at the main drivers for the companies that are involved. There is the subsidy—the contract for difference, or CFD. That subsidy will drive behaviour and might make or break schemes, but that would be for the UK Government to determine. Conditionality could be used, but that, too, would be a decision for the UK Government, and it has chosen not to deploy conditionality, which would guarantee supply chain content as part of the subsidy arrangements. We have worked very hard with officials to turn over every stone to see how we might guarantee conditionality because, to be frank, waiting for companies to do the right thing voluntarily has clearly not been successful.

If the incentives are not working, what is the big stick? What conditionality can be used within state aid rules, and legally? That has been more difficult territory. We have tried to create a culture of expectation on delivery of supply chain benefits, and there have been some commitments from companies in the past. Whether they are legally enforceable is a separate question. There are two areas that I have explored, which officials continue to work on and which I raised at the summit as a challenge to the sector. Of course we want better behaviour and more delivery before we can potentially deploy the new tools.

We are looking at two new tools. The first is the Crown estate. Development on the sea bed—which is Crown Estate Scotland's territory—requires leasing. That is done on a commercial basis, but we are looking at ways to incentivise it. Ultimately it would be ministers' and their agents' decision to grant a consent—a lease—and it would be down to their judgment what was appropriate. We are taking advice about the appropriate levers to ensure that we get more benefits from developers. As part of that, we are looking at carbon footprints in relation to Crown Estate Scotland property. You could ask why we did not do that years ago: the committee will be well aware that devolution of management of the Crown estate did not happen years ago. It is a new power and a new area of authority, which we are exploring in order to get the outcome that we desire.

The second area is decommissioning, which is a matter that Parliament considers. Decommissioning plans are signed off and there is an element of guaranteed liability, which is assurance, if you like, that we are all satisfied that a developer's decommissioning plans are satisfactory. There might be opportunity, because

we sign off decommissioning, to create a culture of expectation that what we look for the sector to deliver overall will be considered in terms of value for money and everything else, in signing off decommissioning. Those are two areas that we are actively exploring that could not have been used in the current round of contracts for difference, but which give us an opportunity for the future.

Those things are signs that the Scottish Government is having creatively to explore devices to achieve what I think should have been delivered in past years: that is, companies taking the lead and getting on with giving UK and Scottish companies the best possible chance to secure onshore work for the offshore industry.

The final thing is to try to ensure that Scottish fabrication, Scottish manufacturing and Scottish industry are as competitive as possible. That is where some of the direct interventions, for example direct support to BiFab, are important. If more companies are able to collaborate, to share good practice and to build up their capacity, the sector will be in an even stronger position. One of the commitments that came from the summit was that tier 1 developers will assess supply chain companies in order that they can collaborate and develop the resource to be in a stronger position to secure work, notwithstanding the other issues that I suspect we will go over this morning. That is the key new-lever scheme.

**The Convener:** Just before we come on to questions from Andy Wightman, I point out that one witness who came to the committee, Bill Elkington, who is the chairman and founder of the JV Driver Group, commented that the Methil yard is not world class and needs improvements. The yard is owned by Scottish Enterprise. It is a specific example of facilities that, it has been suggested, are not up to standard. Is that an area in which the Scottish Government can assist or seek to improve matters?

**Derek Mackay:** I believe that it is, but the timing will have to be right, for this reason. We have heard before about investment in the yard. The issue with that site is that because it is owned by Scottish Enterprise, investment must be state aid rules compliant: financial investment in the yard, depending on its status at the time and the work involved, might come into conflict with state aid rules. If work were to be secured for the yard, and Scottish Enterprise, which is funded by the Government, had just invested in the yard, BiFab might have had to pay that investment back in rent. A financial fix must be agreed such that we do not flout state aid rules.

There is certainly a desire to invest in the yard, but that must be state aid rules compliant. Compliance would, essentially, be around the

timing of the award of contracts and the security of the yard. There is no lack of willingness to invest in the yard—it is just that the point in time at which we can do it is absolutely critical so that any investment is legal. There are on-going meetings about investment in the yard through which a way might well be found. It is a question of timing and the point at which contracts are given, so as not to give competitive advantage that would come into state aid rules territory. If you wish, officials can add to that.

**The Convener:** If they could do so, that would be helpful.

**Andrew Hogg (Scottish Government):** The cabinet secretary has covered the key points. We regularly meet the Fife infrastructure group, which includes the local authority and Scottish Enterprise, which owns Fife energy park. We are in regular dialogue about options on investment and what investment might look like. As the cabinet secretary suggested, timing is key, and securing new work at that yard is important. We are exploring all options and there are live discussions.

**The Convener:** Can you give us any indication of how state aid rules affect that?

**Andrew Hogg:** If we were to invest now, one of the most urgent and pressing matters would be concreting the yard to improve conditions underfoot. If we were to invest in that just now through the public sector, we would have to recover the vast majority of the investment from the company through rent. That is a very difficult discussion to have at a time when the company is still trying to compete for new business. That goes back to the point about timing.

**Derek Mackay:** We could not just give the money without financial return. That would be a direct subsidy, which would flout state aid rules.

**The Convener:** Is that not a bit circular, if you cannot provide the facilities to allow the company to compete? Is it just that the yard is uncompetitive as a location?

**Derek Mackay:** No. There would be an elegant solution if a company said that it wanted to award a contract and the only issue was the lack of concrete. I am sure that there would be an easy fix there if that was the criticism, but it is not. As soon as we have a vehicle through which we are able to invest in the yard, we will do so, but the company is not saying that it is not securing work because of lack of hard standing. I get the point that there is, indeed, a circular benefit. The minute the yard gets a contract, that will probably allow it the financial security that will allow us to invest and to revisit the rent issue to ensure that there is no difficulty with state aid rules. There are multiple benefits from securing a contract.

10:00

**Andy Wightman (Lothian) (Green):** You said that another meeting of the offshore wind supply chain summit will be held later in the year. Can you confirm that the actions that were agreed by the attendees will have been completed by then?

**Derek Mackay:** I can certainly speak for the Scottish Government.

**Andy Wightman:** Number 2 of the actions that were agreed is,

"The Scottish Government will continue to investigate the levers".

**Derek Mackay:** Yes—absolutely.

**Andy Wightman:** Will you have completed your investigations by then?

**Derek Mackay:** Yes, we will have completed those investigations.

**Andy Wightman:** Is the UK Government reviewing CFD and the supply chain plans? Have you had a commitment from it?

**Derek Mackay:** I cannot speak for the UK Government—which is probably a good thing—but I would encourage it to revisit CFD, which it is reviewing. It is not widely known that it is reviewing the contracts for difference scheme.

There is a very blunt policy choice to be made. I am setting out the Scottish Government's position. We want supply chain benefits and we are going to do something about that with the new powers and the window of opportunity that we have. Nothing else has worked—and we have tried exhaustively. The lever that could get conditionality and guaranteed local content in the supply chain is with those who pay the subsidy—the UK Government, through CFD.

I posed the question: why not do it? The answer that I have had is, essentially, cost over conditionality. There is a policy choice. There is a view that it might be a bit more costly to force UK and, therefore, Scottish supply chain content. Surely we agree that that is still a price worth paying in terms of the benefits that will come to the industry in the new renewables sector. However, it is for the UK Government, not the Scottish Government, to review that decision. I encourage it to take that step because it has set out a new commitment to 60 per cent of content being from the UK supply chain. Without the levers to deliver that, it is pie in the sky—the commitment will be meaningless.

**Andy Wightman:** Will you be pressing the UK Government to make as much progress as possible before the next summit?

**Derek Mackay:** Of course.

**Andy Wightman:** Representatives from the offshore wind sector are undertaking a strategic capability assessment of fabrication in three to four months, so that should be completed, and you will be keeping an eye on them.

**Derek Mackay:** Yes.

**Andy Wightman:** Work is also required on reviewing the conditions and processes of contracting, and on risk allocation in the offshore wind sector, which needs to be explored and evaluated further. I assume that the arrangement is a little more porous in terms of timescales—although, that is up to the sector, of course.

**Derek Mackay:** It is up to the sector. In calling the summit, I was saying to the sector, "Here's what we're going to do. What do you have for us? What is your contribution and how do you propose to change things?" I was asking for suggestions. That relates to the £100 million commitment for developing a supply chain. That sounds like a lot of money, and it is available in short order, but it is not so impressive when you look at the overall scale of investment in the sector. I want tangible improvements in the work that is given to Scottish yards. That, for me, would be testimony to success.

**Andy Wightman:** Has the Scottish Government assessed the carbon emissions impact of building jackets for the EDF project in Indonesia?

**Derek Mackay:** We have done—as critics have done—a table-top exercise on that. I do not necessarily want to get too drawn into how many cars' CO<sub>2</sub> equivalent the impact would be. The basic point to make is that it is better to do the work as close to the site as possible. To that, I would say, "We agree". There will certainly be an impact. Of course when work is awarded elsewhere and then equipment is transported so far, there will be a carbon impact.

**Andy Wightman:** You mentioned that you are exploring what can be done in relation to the Crown estate. Of course, the Scottish Government manages the sea bed on behalf of the Crown. I moved an amendment to the Planning (Scotland) Bill to scrap the Crown's rights to give ministers exclusive control, but it was ruled out of scope. Nevertheless, you have, through Crown Estate Scotland, exclusive competence in managing that interest. You say that you are evaluating the scope there. What are the boundaries of that scope? If I were to say that the scope for that was pretty limitless—you could do what you liked and could refuse to lease land to a company that was not prepared to enter into legally binding commitments on the supply chain—what would be the potential problems with that approach, in broad terms, because obviously you are in the midst of exploring those?



**Derek Mackay:** That is a very charged question. You asked what the limits are, but just “in broad terms”.

**Andy Wightman:** I just mean in respect of whether state aid rules or the Crown estate are in play. What issues are in play?

**Derek Mackay:** I think that we can be creative. I have not brought the legal team with me, but I think that David Pratt can speak for many. Whatever we do, we have to work within the law. We obviously have to look for a fair and proportionate approach. We now have competence over the Crown estate, so we decide what level of leasing would be acceptable and under what conditions we allow activities to be undertaken. Whatever we do will have to be proportionate and within the law. It is not “limitless”, as Andy Wightman suggested, but we have competence. We will build in expectations around economic benefits and environmental impacts.

The carbon emissions point is very interesting in terms of how we will build that into the system. We will have time to construct a regime that will try to drive that, but traditionally in leasing arrangements one asks about the economic contribution, the fees, the arrangements and the term of the lease.

I have been very clear, as the finance and economy secretary, in engaging with the Cabinet Secretary for Environment, Climate Change and Land Reform, who leads on the Crown estate, that we currently have no way of ensuring conditionality on those who enjoy the benefits of the offshore renewables sector, and that we want the companies that enjoy those benefits, and which get the subsidies, to give work to Scottish yards. I am looking at ways in which that could be among the considerations of Crown Estate Scotland. We are exploring whether we can develop a regime for work that is compliant in order that we get the desired outcomes.

**Andy Wightman:** So, no offshore renewables projects can go ahead without permission to anchor them on the sea bed, whether they are floating or—

**Derek Mackay:** They would require our consent.

**Andy Wightman:** You have the possibility to offer a lease on full commercial terms with no strings attached, or a reduced-level lease with legally binding agreements on the supply chain. I am trying to explore the degree of flexibility. It seems to me that you have a fair degree of flexibility, as the managing agent for the landowner.

**Derek Mackay:** We will have some flexibility—but if I launch something prematurely, I am only

opening up the Government to legal challenge, which I am trying to resist. I have a great deal of sympathy when it comes to legal challenge—you will understand that I am trying not to open the Government up to vulnerability. I am trying to build a strong and robust system in order to achieve the outcomes that we want using one of the few devices that we have. The much easier solution would be to use CFD, but I do not control that.

**Andy Wightman:** Finally, you mentioned that marine planning is not an option that you think is in play. On the face of it, that seems to be fairly self-evident. Planning consents are for use of land; they are not about who will develop and how they will develop and procure. Maybe this is my ignorance, and I have just been through the process of the Planning (Scotland) Bill, so I should probably know this, although we did not focus much on marine planning. There are section 75 agreements in planning law. Are they similar to marine planning consents?

**David Pratt (Scottish Government):** Section 75 agreements apply only onshore. That has been a key issue with getting associated benefits from offshore developments.

**Andy Wightman:** The Planning (Scotland) Bill has just been through Parliament. Why did we not use it to extend section 75 agreements offshore?

**Derek Mackay:** I no longer have responsibility for planning, but having been a planning minister—Mr Wightman will also know this—I know that planning designation is really about land use or sea use, if you like, in terms of the marine environment. However, planning is not about determining who gets contracts, which is what this is about. We can, by all means, designate use of territory—zonal use—but we cannot specify that the work to deliver that use must go to a specific country, yard or workforce. That is, essentially, what the debate is about.

**Andy Wightman:** I get that. Thank you.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** We have already touched on the area that I was going to ask about, which is conditionality. You have highlighted issues that the Scottish Government will be dealing with—decommissioning, Crown Estate licences and so on. The UK Government is reviewing contracts for difference; Scottish taxpayers, through their utility bills, subsidise a lot of CFDs, so what changes do you want to be made to CFD that would benefit the Scottish economy?

**Derek Mackay:** I have tried to describe the fundamental change to attach conditionality on supply chain content. There is ambition to do that. The UK Government will have to revisit its plan for how to get there. Having questioned the energy minister, and UK civil servants who attended the

summit, I am not much clearer on how we can hit that target without having the appropriate levers to pull. That leaves us in the position that we are in right now, which is that we all share the ambition to get as much work as possible onshore from the offshore renewables sector, but we cannot compel or condition that, so we are left at the mercy of developers in respect of who gets the work.

I do not see that changing much, even with the interventions around collaboration and more competitive partnerships—which is all great, but I do not think that it is the game changer. He who pays the piper calls the tune, and that is where the difference could be. With conditionality in the contracts for difference regime, there would be more guaranteed supply chain content. That is not to say that work would be guaranteed to a particular yard; it would be guaranteed to the nation. For us in Scotland, knowing where the opportunities exist would make the difference. It is a simple question of putting conditionality over cost: energy users are paying for this right now, but do not have access to the jobs that come along with that contribution.

**Gordon MacDonald:** We heard from JV Driver Group when we had a round-table meeting that, in Canada, companies that fail to deliver what they committed to in local benefit agreements can be fined. The example was given of a company that was fined up to £150 million for not delivering what it said it would deliver in its contract bid. Would you encourage the UK Government to look at that option?

**Derek Mackay:** I would encourage it to look at that option. It will obviously be working within EU law and state aid rules—for the time being, and for as long as possible. We have a very close relationship with D F Barnes and JV Driver, as BiFab's owners. We engage with them regularly. Of course, there is a different legal system in Canada, so we do not have devices that they have to ensure local community benefits. I assure Mr MacDonald that we would be using them if we had them, but we do not have any ability to enforce such things. That is a difference that I encourage the UK Government to look at.

**Jamie Halcro Johnston (Highlands and Islands) (Con):** I welcome the fact that you are looking at what can be done through the Crown estate. When did your officials start looking at that as a potential way of providing conditionality?

**Derek Mackay:** We have had responsibility for the Crown estate since last autumn. As it happens, the window of opportunity for new consents does not fall neatly; even if it was a great idea last autumn when responsibility for the estate was devolved, there was no consenting needed that would have been appropriate, relevant or timely. Timing, however, is not the question with

the Crown estate. Not having had control over it before last autumn, we could not have implemented changes earlier.

**Jamie Halcro Johnston:** You would, however, be able to do that and perhaps take legal advice. Devolution of the Crown estate was recommended in the Smith commission in 2014, became part of the Scotland Act 2016 and was founded in 2017. Have you started looking only recently at whether what you describe could be a way of delivering?

**Derek Mackay:** We have started looking only recently, on the back of what has happened the past couple of years. Many commitments have been made to Scotland, the Scottish Government and others about supply chain benefits, but they have not materialised.

I have been working hard with officials to see what powers and levers we have just to get conditionality. If it is not going to happen on a voluntary basis through companies doing the right thing by Scotland, what levers can we pull? We have not been able to find a legal route to compel companies to invest in Scotland, which is what we are now exploring.

Naturally, we would all say that it is self-evident that they should invest in Scotland because they will get high-quality work and it will be beneficial for us all. In the absence of a legal remedy, all the advice that I have had is that we could do it through CFD, but we do not control that; that is for the UK Government. We do not control the one thing that could be a game changer, so I am exhausting the system to see what we control that could be used competently and legally to get the same outcome.

As I said, with Scottish Government officials now having management of the Crown estate, we are exploring that, as well as decommissioning, which includes many things. I am asking that the system be considered in terms of value for money, economic benefit and environmental considerations.

10:15

Why is all that important? It is because Parliament and ministers ultimately decide, and agents act in the Scottish ministers' name. When it comes to giving work to Scotland, companies sometimes tell me, "Oh, it's difficult, Mr Mackay". Do you know what I am going to say to those companies when they want to get the contracts and develop in Scotland but do not want to give us the jobs? I am going to say, "It's difficult". We have to create an environment in which our expectations for companies investing in Scotland are made clear. That is why we are exploring the mechanisms for doing that legally, because of

course we would always want to act within the law, would we not, Mr Johnston?

**Jamie Halcro Johnston:** I am sure that we would.

**John Mason (Glasgow Shettleston) (SNP):** Can you say something about the relationship between BiFab and the Government? As I understand it, there is a 28 per cent shareholding, and that may go up in the future. Does that mean that the Government has quite a lot of involvement in the running of BiFab?

**Derek Mackay:** We have involvement in so far as we want the yard to secure work; that is what we are striving to achieve. I support the employees at the yard and the trade unions in trying to get work, and we support the company in understanding its issues. We are looking at the investment propositions for the yard. We also have an interest in terms of our stake in the company. Clearly, we have been working to try to raise the overall issue of Scottish content supply chain benefits; we are all for industry in Scotland.

On our relationship with BiFab, we have regular contact and regular political and official engagement, but naturally we do not take any managerial or operational control. It is about understanding the company and its needs and the experience in Scotland, and being as supportive as possible.

Of course, a commercially confidential agreement about the nature of our contribution goes along with that. As we reported to another committee in a confidential session, for reasons that remain confidential there is also the issue of whether the Government can offer guarantees to companies that can help them to secure work. If such an arrangement was made with BiFab, it would be reported to the Finance and Constitution Committee for its consideration, but that would be commercially confidential and the report would not be given in a public session.

**John Mason:** Some shareholders that hold 28 per cent in a company would be involved in the management of that company. Is that a choice? Do we have complete confidence in the board, BiFab and JV Driver, and all the rest of it, and feel that there is nothing we can add to the management of the company, or are there other reasons why the Government is not involved in the management?

**Derek Mackay:** In essence, civil servants are good at policy and running the bureaucracy of the country, but they do not necessarily run industrial companies directly, or have much to add to that, so we would not take operational control. We have a place on the board, but that is mainly with observer status.

However, our political and official engagement is on-going. We would not tell the company how to run its affairs, but we watch it very closely for the public interest and to be assured that the actions of the company are right. We are alive to the decisions that it is making. That gives us a much deeper forensic understanding of the experience of the company, but it would be no reason for us to try to manage the company.

**John Mason:** I was not thinking of day-to-day management. However, if I am picking this up correctly, there is one seat on the board that is a representative of the Scottish Government.

**Derek Mackay:** As a shareholder, yes.

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

**Derek Mackay:** But that representative acts mainly as an observer, rather than as a contributor to operational decisions.

**John Mason:** However, you would be aware of major decisions that the company was making. The suggestion is that the figure could go up to 38 per cent. When, or how, would that happen?

**Derek Mackay:** It is a bit like a potential drawdown of loan. The share in the company can go up by way of an equity arrangement, so it could go as high as 38 per cent under the terms of the arrangement that we have with the company.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** Cabinet secretary, we have touched on state aid. In taking evidence, we have heard allegations that state aid rules appear to be being flouted, particularly in the case of Navantia, the Spanish state-owned company that outbid BiFab for the Kincardine wind farm work. Has the Scottish Government done any work to ascertain whether that is the case?

**Derek Mackay:** It is not really for the Scottish Government to do that work, although we might be aware of it and understand it. It would not be the norm for the Scottish Government to be the notifying body as one member state complaining about another. However, a company—or, indeed, a trade union, although a company would probably be better informed of the circumstances—could complain to the European Commission if it felt that there had been a state aid breach.

A company would be better positioned to do that—it would know the accusation that might be made, the details, the finances and whether there was reason to believe that the accusation was true. It would not be for the Scottish Government to raise a complaint or to do that work. If it was felt that there were grounds for complaint, it would be for a company to lodge such a complaint with the European Commission. Ultimately, the European courts would determine the case, but it would go to the Commission in the first instance.

**Colin Beattie:** Would an individual company really do that? Is there any case in which that has happened in Scotland?

**Derek Mackay:** I would have to check with lawyers to understand whether that was the case. However, a Government would not ordinarily raise that kind of action. I am not aware of the Scottish Government having done that while I have been a member of the Government. That would be a matter for a company to pursue, rather than for us.

**Colin Beattie:** If the allegation is true, it puts BiFab in a difficult position. How can it compete in that sort of environment? If that is extended across the Scottish economy, is it happening elsewhere? Is there an impact on the economy? Is it not quite an important issue?

**Derek Mackay:** It is an important issue. We all want a level playing field and we want everyone to play by the rules—we certainly do. We often bemoan the state aid rules, but we abide by the rules and we want everyone else to do so, too. If a company feels that it has that evidence, it should raise a complaint with the Commission. A company that has been involved, which can make the accusation and stack it up with evidence, is far better placed than anyone else to raise a complaint with the Commission.

**Colin Beattie:** We are looking specifically at BiFab and the concerns about making it into a flourishing, prosperous business. According to the company, this issue has specifically impacted on it. Surely that puts the company in a very difficult position. Even if it complains to the Commission, how many years could it take before anything happens? Such things take a long time.

**Derek Mackay:** Who knows what our position in the European Union will be by the time that any case that might have been heard has concluded? Mr Beattie is asking very good questions, but they are not really questions for the Scottish Government; they are for those who are making the accusations, if they believe that they have the evidence to make the challenge.

I am trying to reassure the committee that we abide by the rules and that we want a level playing field. That is the case that we would make, but those who are making the accusations would need to report the breach if they felt that the evidence was credible enough, notwithstanding the pressures that go along with the judicial process.

**Colin Beattie:** Given the allegations that have been made by BiFab, are you satisfied that there is not a general concern in connection with businesses elsewhere within the Scottish economy? Is there any evidence of that?

**Derek Mackay:** The direct answer is that I have not seen evidence to suggest that this is a general issue in the Scottish economy.

**Andy Wightman:** You have a seat on the board and you own part of the company. Surely, as a shareholder, it would be appropriate for you to ask the company to stack up whatever evidence it has and, if necessary, push for that complaint to be made.

**Derek Mackay:** When I have met the company, I have said what the legal routes are, but that is open to the company. You would need to ask BiFab why it chooses not to pursue that route. It might be for the reasons that Colin Beattie suggested, which are about time and process. It is for the company to consider whether it wants to pursue that action.

I have not personally seen evidence that would give me confidence that there has been wrongdoing, but that is not to say that the company is wrong or that it does not have that evidence. However, that would not be a matter for the Scottish Government to raise; it is for the company to raise it if it believes, as per the comments that it gave to the committee, that there has been wrongdoing and flouting of state aid rules.

**Andy Wightman:** But you sit on the board—

**Derek Mackay:** No. I do not sit on the board.

**Andy Wightman:** The Scottish Government is represented on the board; your representative on the board could put that forward as an agenda item.

**Derek Mackay:** No. The company would need to put that forward.

**Andy Wightman:** The shareholders and directors of the company ultimately govern the company.

**Derek Mackay:** I think that you would be better asking the company why it would not want to progress a legal challenge with the Commission. I could spend years and energy on this, or I can do what I am doing: I am trying to secure the company work.

**Andy Wightman:** We are not inviting you to take the challenge—

**Derek Mackay:** That is refreshing—

**Andy Wightman:** That might have been behind some of Mr Beattie's questions, but it is not behind mine. I am asking whether you could use the fact that you have a seat on the board to ask the company, at a board meeting, what evidence it has and to bring forward a paper at the next board meeting.

**Derek Mackay:** I am happy to say again to the company that, if it believes that it has evidence that there has been contravention and it wishes to take that up by way of a complaint to the Commission, that is for the company to do. The Scottish Government should not be encouraging or discouraging that legal action; that would be for the company itself.

**Andy Wightman:** But the shareholder has a duty—

**Derek Mackay:** Mr Wightman, we are saying the same thing. We are both saying that, if the company believes that it has evidence and wishes to take it further, it should do so. That is for the company to decide.

Mr Mason asked whether we take a role in the operational and management decisions of the company, and I said that we do not. We do not instruct or lead the board. We are there to understand what the company is doing, and to understand the wider, forensic issues. If the company wishes to raise a state aid complaint, that is entirely a matter for the company. That would not be a management decision for us. Publicly, I am saying the same as you: if the company thinks that it has evidence, it should raise a complaint.

**Andy Wightman:** If the Scottish Government is a shareholder in a private company, I would have thought that it had a duty to the taxpayer to raise the matter inside the company. However, I will leave it there.

**Derek Mackay:** I think that I have said publicly what I have said privately: if the company has evidence, it should raise it. However, there is something very peculiar about a Government within a member state complaining about another member state. We are not the member state; we are Scotland, which is within the member state. I am just saying—the point is very subtle, but we are saying the same thing—that if there is evidence, the company should take it forward and raise a complaint, and surely justice will be done.

10:30

**John Mason:** From a slightly different angle, I am a bit surprised that Scottish Enterprise does not have a role in this. Presumably, its job is to try to get businesses to come here instead of to another member state. I know that there are a lot of restrictions on how Scottish Enterprise can help a company, because of the state aid rules, so I would have thought that, just as Scottish Enterprise tries to do the best for inward investors, it would also keep an eye on what other countries might be doing and whether they were on a borderline, or pushing the rules.

My impression was that it was relatively easy to raise the question of state aid. For example, I have had Rangers supporters raising the question of whether Celtic got state aid, and the European Commission followed that up, apparently. It did not seem to be difficult at least to raise the question. Could Scottish Enterprise not have a role in this?

**Derek Mackay:** I do not want to get into any of those complexities, other than to say that I do not see the Scottish Government's enterprise agency as trying to act as a policing authority for European state aid rules. That is what the European authorities are for. I am happy to ask my official, if you wish, to give a bit more detail on the appropriateness of that action, as I have tried to describe it.

**Andrew Hogg:** I will largely add more detail to Mr Mackay's point. In effect, the Scottish Government, Scottish Enterprise and our enterprise agencies work closely with the business and make sure that any aid or support that we give is watertight from a state aid perspective. As the committee is aware, if we were not to act in such a way, the case would not be against the Government; the funds would be clawed back from the company. Our first priority is to ensure that everything we are doing is compatible with state aid requirements. The knowledge and expertise of our enterprise agencies are important in helping us with that.

On the question whether it is for the Scottish Government to advise the company to make a claim, our position is not to interfere in management and operational decisions, which are for the company to make. Our main role on the board is as an observer to ensure that information flows freely and that, if the company has an ask of the Government, we can act quickly on it and respond as fast as we can. The process of making a state aid complaint is relatively light touch; there are well-documented procedures on the Commission website about how any interested party—not just BiFab, but anybody across the EU who feels that their business has been affected—is within their rights to raise a complaint. However, it is still a management decision, because BiFab would have to devote management time and resources to gather the intelligence and evidence to make that case. It is not necessarily for the Government to take that position.

**The Convener:** The position that seems to have been adopted is slightly puzzling. I am not sure that other regional Governments in European countries would take the view that it is not of interest to them, if companies within their area are potentially affected by this. It seems to me to be something that the Scottish Government would have an interest in. Do you not accept that?

**Derek Mackay:** That is different language. Do I have an interest in it? Yes. Do I want to launch a complaint on behalf of another company in which we have a stake? No.

**The Convener:** I suppose that the question is: what is the Scottish Government doing about it then?

**Derek Mackay:** As I have described, I have said to the company that, if it feels that it has evidence that merits a complaint, it should raise it with the Commission. Ultimately, it would be for the European authorities to decide. I personally have not seen the evidence—I referred to this earlier—that would conclude that there has been wrongdoing, but the company itself may hold that kind of open-book information.

**The Convener:** Another point is that the law on state aid in particular is complex. It is not necessarily clear, so one has to take an active interest in it, its interpretation and how it is applied.

**Derek Mackay:** Convener, I understand why you are pursuing this line of questioning and I hope that you understand why I am protecting the interests of the Government. If we are trying to achieve the outcome of ensuring that we get more onshore supply chain benefits from the offshore work, the more fruitful way to do that is through the channels that I have suggested. There is clearly an interest in a level playing field—I want that to be delivered—but the only way in which that can truly be tested is if there is a complaint from a company. That is down to the company; it is not for the Scottish Government. We will take an interest, of course, but it is not for the Scottish Government to launch that complaint.

As I said, the company will have more insight into open-book information. If you want to develop this further, you need to speak to the company. I cannot say what information leads the company to conclude that there is no level playing field and what it intends to do about it. The questions are legitimate, and I would put them back to the company rather than trying to have me speak for it, if that is a matter of concern—and I can understand why it is.

**The Convener:** We move on to questions from Jackie Baillie.

**Jackie Baillie (Dumbarton) (Lab):** Thank you very much, convener. I am glad that the cabinet secretary recognises that we are all on the same page in wanting BiFab to secure supply chain work from billion-pound wind projects in Scotland, and I welcome his change of heart in inviting a member of the committee to the next summit.

We received a communication from Tony Mackay, an economist based up in Inverness, who informed the committee that the Global Energy

Group at Nigg had been more successful at winning new work than BiFab. He pointed to a lack of support from Highlands and Islands Enterprise and Scottish Enterprise as a reason for the supply chain's current underperformance. Do you agree with his assessment and, if so, what can the wider supply chain learn from the Global Energy Group?

**Derek Mackay:** No, I do not agree with that assessment overall, based on my engagement with developers. If you want to boil it down, a lot of companies say that they make awards based on just cost; they say that it is cheaper to do the work elsewhere, for whatever reason. I would not say that it comes down to a lack of entrepreneurship or co-ordination, or indeed a lack of investment. However, it can be self-fulfilling: if investment comes, capacity can improve and the pipeline of work will bring a host of benefits.

When I have engaged with companies, as Jackie Baillie would expect my energies have gone into engaging with developers and expressing the disappointment in Scotland. When companies have been getting consents and enjoying the benefits of their subsidies but Scotland has not been getting the work, I have expressed that disappointment, and when contracts are being placed, I take the opportunity to raise expectations around what Scotland gets.

The critique that I have had back is largely around cost. Largely, companies say that it is cheaper to do the work elsewhere. They say, "We don't have to do the work in the UK or in Scotland". They do not say the words "You can't compel us", but they know that we have not been able to compel them for the reasons that we have discussed this morning—there is no conditionality on the awards or subsidies.

I disagree that this is just about a curious lack of support from an enterprise agency. The companies that I have engaged with have been able to say that the issue is cost. My point is that some countries would be hard to compete with, perhaps because of labour rates or wages, or other matters of scale. However, we need to create as competitive and incentivised a location as possible in Scotland—and even when we have done that, we will still suffer on cost. That is one of the issues: BiFab has said that no matter how competitive it could be, when it comes to pure costs it might not win. However, on quality it can win, and on local content absolutely it can win.

There are a number of ways into this issue. Do I encourage the enterprise agencies—Scottish Enterprise and HIE—to be as creative, innovative and supportive as possible? Yes, I do, and of course there is a mixed picture in Scotland. In renewables, there have been successful yards and enterprises, some of which have been able to collaborate and create a shared capacity with

wider expertise. Once you have a pipeline of work, it is easier to invest. You have a long-term future, so you can invest and scale up the workforce. You can also do more around research and development and so on. Of course, there can be further support from the enterprise agencies. The Global Energy Group is a good example of that. It is also true to say that different parts of the sector are targeting different parts of the market. BiFab is targeting fabrication; some of the other companies are targeting manufacturing, servicing or location. Companies are doing different things, which might explain some of the different experiences.

**Jackie Baillie:** I accept the cabinet secretary's wider points, but I simply note that, through HIE, the Scottish Government put £1.8 million into the Nigg yard. You talked about conditionality; that is an area in which the Scottish Government could apply conditions. Global Energy boasted on its website that it was anti-trade union and had a non-unionised workforce. In 2012, the Scottish Government's approach was to support that. I am assuming that you, as a cabinet secretary in the Scottish Government, would not now support such an approach to a company that boasted openly of being anti-union.

**Derek Mackay:** No. I would not encourage any company to be anti-union.

**Jamie Halcro Johnston:** How do Highlands and Islands Enterprise and Scottish Enterprise co-ordinate with other agencies such as Crown Estate Scotland and Skills Development Scotland to make sure that there is the right environment, skills and facilities and so on to take advantage of offshore, should we be able to take full advantage of it?

**Derek Mackay:** They do a range of work, some of which is around expert support. They assist with conferences that bring together people with interests in the renewable sector. They make connections with foreign direct investment and what companies might be interested in doing; they also look at exports. Of course, the sectoral experts engage with each other as well as with the wider account managed companies. There are successes in enterprise investment into companies working in renewables, so a degree of co-operation and leadership can be provided; again, that is all within state aid rules.

Fabrication appears to be the slightly more difficult territory—if you will pardon the pun—because of the nature of the business. While some renewables companies have been able to expand some output operations, they have not been able to deliver for fabrication. Clearly, that is something that we want to change.

Across the sector, in renewables and in energy specifically, Scotland has a very strong reputation.

That is why we hold international conferences here. Scottish companies have a strong presence here and abroad, but the very niche area in which we feel most sorely let down, in my opinion, is in onshore manufacturing industrial jobs, particularly in fabrication. BiFab is a pretty good example of that sense of disappointment, when we know that the staff can do so much. We can scale up quickly and we can deliver. There is new ownership of the company; the trade unions and staff are engaged. I believe that the campaign is right: they really are ready to go with a pipeline of work. Scottish Enterprise, Highlands and Islands Enterprise and others are very active in this area.

**Jamie Halcro Johnston:** Given the potential—some single fields offshore have hundreds of turbines—are we in a position to actually cater for that? I do not necessarily mean at the moment. Are there plans to make sure that we have the fabrication yards? This is not just about BiFab; across my region, the Highlands and Islands, do we have the skills or the plans to get the skills in place? What are the timescales? When the next group of licences is issued, will we be ready for that?

**Derek Mackay:** Do you mean contracts for difference licences?

**Jamie Halcro Johnston:** No, I am sorry—I mean for the Crown Estate licences.

**Derek Mackay:** I will come back to that. By way of detail on the engagement with the offshore wind expert support programme—you have given me enough time to find the information—172 companies have worked with the enterprise agencies since 2016. I think that that shows the scale of that work. Three companies have secured contracts from that totalling £35 million in the last year alone. Across the Highlands and Islands, from March 2010 to May 2019 Highlands and Islands Enterprise invested more than £41.4 million towards energy-related infrastructure facilities, against a combined total investment of more than £190.2 million from private and public sources.

With the best will in the world, even BiFab admits that it could not do all the work that could possibly be done in the offshore sector onshore. It just wants a fighting chance and enough work to build up its capacity and increase its workforce. The workforce has been down to about 80, but I think that it is about 120 at the moment. We could scale up and get on with more contracts very quickly. Across Scotland, we have the capacity, the quality and the talented workforce. We have the yards and the infrastructure. There is an environmental benefit to doing the work as close as possible, on our shores, in our waters and on our site.

With regard to the next round of licensing, we hope that the new arrangements for the outcomes that we are trying to achieve will be designed and in place in time for the next—interestingly named—Crown Estate Scotland leasing round.

10:45

**Jamie Halcro Johnston:** When will that be?

**Derek Mackay:** The UK Government is looking at reviewing contracts for difference right now, so the sooner that that can be concluded, the better. However, that takes us back to the policy choice. Where possible, we will be choosing local content; the UK Government needs to do the same. If we are both doing the same, think of the industrial benefit, the jobs and the supply chain content that will be coming across the whole of the UK—and to Scotland—if we are both using that lever in the fashion that I am describing.

David Pratt will respond on the next round of Crown Estate leasing in Scotland.

**David Pratt:** The Scotland process, which will commence later this year, will sit alongside a sectoral plan from the Scottish Government identifying the areas. One way of looking at that is that we are still exploring the actual terms and conditions of the Crown Estate leasing, as the cabinet secretary outlined. Once those terms and conditions are in place, we will be able to say how they will factor into the process and be considered, as leases go from exclusivity into a formal lease stage.

**Jamie Halcro Johnston:** If we are able to factor in conditionality to boost the opportunities for domestic companies, how will Highlands and Islands Enterprise, Scottish Enterprise and all the other related bodies be supercharged to meet the demand? If we are talking about one development having 200 turbines, that is a huge amount of work, the capacity for which probably does not exist at the moment. How will we make sure that we are ready to meet that demand?

**Derek Mackay:** If we are talking about how we manage the oversupply of work coming to Scottish yards, that would be a nice problem to have.

**Jamie Halcro Johnston:** It is the old Alex Ferguson problem of having the best players to pick, but it is still has to be addressed.

**Derek Mackay:** Some of the work has already begun. The summit was held partly to say, “Now we have to look at the big stick, because we have tried to incentivise you. What are you bringing to the table?” I thought, “What will the offer from the sector be?” It was to explore co-ordination and to explore investing in the supply chain to support better co-ordination. That is partly where the

announcement of £100 million came from—it was first trailed at that summit.

Some of the work has already begun on collaborating and building up that capacity. That will remove yet another excuse for not placing contracts in domestic yards, because the sector will have a responsibility to develop and stimulate improvement. Yes—we will work with Scottish Enterprise and we will work with the sector. It would be good if some of the developers—or, more accurately, businesses—co-ordinated with one another and said, “Could you do some of the work, and we can do some of it?” A bit more collaboration and partnership would be good for the country overall, rather than individual companies vying with one another in competition.

Fabrication is a very specialist sector. Fabrication is different from servicing, and it is different from some of the construction. We will absolutely explore all that, but the first big, key thing we have to do is to have that game-changer moment, with companies actually awarding contracts in Scotland. As I said at the start—it is very topical and timely—I am cautiously optimistic that BiFab will secure work.

**Andy Wightman:** Underpinning all our discussions this morning has been the presumption that multinational private companies are the developers drawing in capital from a range of sources, but of course many of the companies to which they are offering work are themselves state-owned enterprises of other countries. The Government has proposed a publicly owned energy company, and we have Sweden's Vattenfall, which is a state-owned company operating offshore. Surely another option for the future would be to explore the role of a state-owned company being the developer. It would then have almost limitless control over who it supplied contracts to.

**Derek Mackay:** That is a very interesting point, and indeed it would. I make that point to the developers. I point out that the Government is bound by the law and so are companies, but if a company chooses to make the right decision in terms of investing its work in a particular country, it can make that decision. I am already using that argument. Whatever the status of the company, if it is getting consents in Scotland it should be investing in industrial jobs in Scotland.

As to a future Scottish Government having a state-owned, publicly run renewables company, Mr Wightman makes a very interesting proposition, but I am not sure that it would be up and running quickly enough to give contracts to BiFab.



**Andy Wightman:** What is your proposition? The Government is committed to establishing a publicly owned energy company.

**Derek Mackay:** But you are talking specifically about the offshore renewables sector, so we are talking about slightly different things.

**Andy Wightman:** As I understand it—the committee has had discussions on this question—the scope of that publicly owned energy company is still very much under discussion. I am inviting you to consider how its scope could embrace being a state-owned enterprise in this sector, at some time down the line.

**Derek Mackay:** I am happy to pass on those comments to the Minister for Energy, Connectivity and the Islands, who leads on this issue.

**The Convener:** There are no further questions from committee members, so I thank the cabinet secretary. I suspend the meeting and we move into private session.

10:51

*Meeting continued in private until 11:54.*



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