



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 8 December 2020

Session 5



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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
34th Meeting 2020, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Angus MacDonald (Falkirk East) (SNP)

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

*Liz Smith (Mid Scotland and Fife) (Con)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Richard Dixon

Marie Fallon

Mairi Gougeon (Minister for Rural Affairs and the Natural Environment)

Jim Martin

Paul McAleavey

Annalisa Savaresi

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Virtual Meeting

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 8 December 2020

[The Convener opened the meeting at 08:00]

Decision on Taking Business in Private

The Convener (Gillian Martin): I welcome everyone to the Environment, Climate Change and Land Reform Committee's 34th meeting of 2020. The first item on our agenda is a decision on whether to take item 6, which is consideration of the evidence heard on environmental standards Scotland, in private. Do members agree to take item 6 in private? I see that members are indicating agreement.

UK Withdrawal from the European Union (Continuity) (Scotland) Bill: After Stage 2

Environmental Standards Scotland Interim Board

08:00

The Convener: Agenda item 2 relates to the UK Withdrawal from the European Union (Continuity) (Scotland) Bill. We have an evidence session with the nominees to the interim board of the non-statutory environmental governance body, environmental standards Scotland, which we will refer to as ESS throughout the session. We have Jim Martin, who is the proposed chair, Paul McAleavey, Richard Dixon, Marie Fallon and Annalisa Savaresi.

Thank you all for making time for the meeting this morning. We have got you up very early, before the sun is up, but we wanted to meet you as soon as possible. Thank you also for providing us with a biography and summary of your suitability, which is very helpful. It is available on our website, so people who are watching can look at it.

We have an hour with you this morning, and we have an awful lot to cover. Before I start asking questions, and to make it clear to those watching, I highlight that we are not making a decision on your appointments. The session is part of the committee's scrutiny function, which involves meeting you and going through your suitability for appointment and your intentions with regard to ESS.

We will not be going into areas around the scope of ESS that are still to be decided. Somewhat unusually, we are in the position of the Parliament not having concluded its scrutiny of the bill, as we still have stage 3 to go. We have questions outstanding around the scope of ESS that the cabinet secretary will be addressing, so we will try to keep away from that subject and concentrate on you as the board's members. With that in mind, from reading your biographies and knowing some of you, your expertise and the wealth of experience that you bring to the roles are obvious.

I will come to Jim Martin first. I ask him to go over why he has been appointed as chair and what he brings to the role.

Jim Martin: Millions of years ago now, I was asked if I would chair an interim panel, as it was to be called. If you recall, at that time we thought that we were going to have an immediate exit from the European Union. I spent some time working with

officials and helping to recruit other members of the panel, which, I am pleased to say, never actually met, as we did not have a cliff-edge Brexit at that time. We began to lay the foundations for what is now ESS, so I have considerable experience of trying to pull that together.

In my past lives, I have experience of setting up a public body, and I was the Scottish Public Services Ombudsman for around eight years, so I am used to investigating difficult, complex and publicly controversial issues and coming to solutions that are not always popular. In the role of chair of ESS, that experience will be very useful.

I have a clear vision for where I think ESS needs to go. Looking at my colleagues on the board, I think that we have complementary skills across a range of areas that we will need in order to bring some expertise to the panel. Although we have not had much time to speak to each other yet, I think that it will be a panel that can ask the right questions, and I am pretty sure that it will dig for the right answers as well.

The Convener: You have experience of setting up an organisation from scratch, very quickly, which is, in effect, what is happening with ESS.

Jim Martin: Yes. I was the first Police Complaints Commissioner for Scotland and I was asked to begin that organisation literally from scratch, without any resources, premises, people, systems, policies or procedures. I was given a very short timescale in which to set it up, get it running and make it credible. At the time, it was a pretty controversial organisation to set up, because there was some resistance to the establishment of a police complaints commission in Scotland. However, I am pleased to say that it quickly became an accepted part of Scottish life. It has developed, morphed into the Police Investigations and Review Commissioner and become a standing part of corporate governance in Scotland.

The Convener: I should clarify that I misspoke earlier about the appointments, which will, of course, depend on the Parliament approving a motion. I should have made that clear. I will come back to Jim Martin, but I would like to put the same question to Paul McAleavey.

Paul McAleavey: By profession, I am a European Union civil servant. I have worked for the European Commission for the past 25 years, many of those in the area of environment and climate. For the past few years, I have been seconded to the European Environment Agency in Copenhagen, where my job has been to strengthen the role of that agency as a watchdog for Europe's environment and climate policy.

I am highly motivated to work on questions concerning the twin crises of biodiversity and

climate that we face. The European Union is moving forward with really ambitious plans just now in the form of the eighth environment action programme European green deal. It is setting a high level of ambition. I can bring those years of experience to the panel in order to help Scotland to keep pace. It is absolutely essential that Scotland does that and does not miss the opportunity.

In terms of my competence, I am used to working with lots of data and with experts to analyse uncertainties in environmental and climate science in order to inform policy makers. I would bring the experience of working in the EU for 25 years and of working for an independent watchdog at EU level.

The Convener: You also had some time at the EEA, I believe.

Paul McAleavey: Yes—I am just finishing my tasks at the European Environment Agency. I was seconded from the Commission to the agency to strengthen it and to give it more teeth as a watchdog for EU policy. I have done that and I am about to move back to Brussels to take on a job working for the joint research centre of the European Commission—its scientific service. I will be working in senior management to help to shape the scientific evidence that is brought to EU decision making not just in the environment and climate area, but across a broad range of areas including economic modelling and nuclear energy. Therefore, I am used to working at the interface between science and politics.

The Convener: Thank you. I now move to Richard Dixon with the same question.

Richard Dixon: I have a PhD in astrophysics, which gives me a good grounding in science and makes me nearly a rocket scientist. I have an MSc in energy systems and environmental management, and I also have 25 years' experience of working at Friends of the Earth, WWF and then at Friends of the Earth again. That has involved working in the space of science, policy, politics and media, and it requires me to work on climate change, air pollution and the circular economy and to understand and, of course, to be passionate about those issues.

With regard to my managerial experience, Friends of the Earth will have about the same budgets and number of staff next year as ESS is expected to have, so I have that relevant experience. I was also on the board of the Scottish Environment Protection Agency for eight years, until the end of last year; in fact, Stewart Stevenson originally appointed me—thank you very much. I was on the audit committee of SEPA for most of that time, so I have seen how a big public body works. I have been involved in

discussions about regulation and environmental standards at the SEPA board. At ESS, I hope to provide a strong interface with SEPA and to make that crucial relationship work very well.

The Convener: Thank you. I was going to ask about that very important interface; we have been discussing it as we have been scrutinising the setting up of ESS.

We come to Marie Fallon.

Marie Fallon: I have a wide background in environmental matters. I have over 35 years' experience of working in the public sector. The earlier part of my career was primarily in local government, where I had various roles in which the environment was a core part. For the past seven years, I have worked for the Environment Agency in England, where I held a regional and then a national role.

I want to bring to ESS the experience of being on the public sector side, as well as the experience of trying to deliver environmental issues at a local and a national level. I have a lot of experience of working with different partners and with complex issues, trying to interpret how environmental law needs to be delivered at a local level as well as at a national level and trying to get under the skin of whether a particular law or regulation is actually going to deliver the outcomes in relation to the environment, because sometimes things are put forward but the ability to deliver the outcomes is not there. I am keen to make sure that improvement of the environment and of the legislation can be achieved through ESS.

I have worked on many complex issues from nuclear to waste to many of the different regulatory sides of environment. I have worked with lots of different partners in national Government and in different sectors, industries and major international companies. Therefore, I can bring the experience of working with industry to the ESS board as well as my ability to work with different individuals and to work within a collective. In the past, I have worked on different boards as well as having chaired boards, so I am very experienced in how a board needs to operate to take things forward.

The Convener: Your experience and knowledge of working in the environmental landscape in England is going to be crucial for an interface as well.

Marie Fallon: That is right. I have worked with SEPA and other agencies in Scotland, but my experience of working in England will be helpful in ensuring that the interface with the office for environmental protection can be well connected, so that we are able to work effectively together.

The Convener: Finally in our round robin, can you tell us some of your experience, Dr Annalisa Savaresi?

Annalisa Savaresi: I am an academic and an expert in environmental law. I have experience in working with governmental and non-governmental organisations including the International Union for the Conservation of Nature and the International Institute for Sustainable Development. I am currently a senior lecturer at the University of Stirling, and I previously held positions at the universities of Edinburgh and Copenhagen.

Therefore, I bring to the board experience in law, including international and EU law. I have a track record of engaging both the Scottish Government and the Scottish Parliament in matters relating to environmental governance and EU exit, as committee members probably already know.

The Convener: Yes, you have been a frequent witness at our committee over the past few years. I will open up the discussion to my colleagues in the committee. I call Claudia Beamish.

Claudia Beamish (South Scotland) (Lab): Thank you to the witnesses for their initial comments in response to our convener's question. I will ask you each in turn—coming to Jim Martin last, having heard what the others have said, as he is to be the chair—whether, in your view, a board could have any weaknesses and whether there any specific areas of expertise that you think might be lacking. I appreciate that this is an early hour in the morning and that it is early days for you, but do you see in the board overall—I am not looking at individuals—any gaps or weaknesses or the need for other expertise?

08:15

Marie Fallon: As you say, it is very early days in the establishment of the board and in trying to understand what the legislation will require the board to do. At the moment, we are trying to take a step back and ensure that we have all the elements in place, because there will be a combination of board members and staff in the secretariat supporting the panel.

As a board, we will still be able to seek expertise and input into any of our discussions at an early stage. I cannot say whether that will be this or that, because it is far too early for me to come to that conclusion, but I am confident that, among us, we have the opportunity to identify some of the gaps.

Richard Dixon: We have a good range of experience and networks, which are really important, around the table. Obviously, Jim Martin has experience of setting up a public body, which

is crucial. Who we will get as staff members and their skill sets will, of course, be really important.

One gap that has been suggested is in environmental science, which is mentioned in the bill as currently drafted. I want to address that.

According to the current version of the bill, we have the capacity to appoint two more board members, so we can fill gaps if we have them. When we introduced ourselves, members heard about the familiarity of many of us with environmental science and issues around it. I have counted that, between Paul McAleavey, Marie Fallon and me, we have eight decades' worth of experience of dealing with issues to do with environmental science. We understand how to measure faecal coliforms in bathing water, we understand the health impacts of air pollution, and we know how to look at an emissions inventory for an industrial sector. We have a great deal of familiarity with environmental science, even if that may not be in our academic background, and we know lots of people whom we would ask if we needed to know more, which is important. Therefore, I do not think that environmental science is particularly a gap. We would fill that through our contacts and networks. That might be another skill set that we would look for in further board members if we needed to when we got to that stage.

Annalisa Savaresi: As a lawyer, I am, of course, bound to say that its expertise in Scots law may be regarded as a weakness in the present membership of the panel. However, we are well positioned to source that expertise as a group and in the recruitment of board members.

Paul McAleavey: As we have said, we have not yet formally met as a board, so it is a bit difficult to answer the question, but I think that we have quite a good balance.

I will make a couple of points, one of which is a self-aware one. I have not worked in Scotland for more than a quarter of a century. Members will be happy to hear that I have not lost my accent, even though I have picked up Swedish citizenship along the way. As an EU civil servant, I have tried to keep up my knowledge of what is going on in Scotland, and I am certainly looking to deepen that and to learn from colleagues on the board.

I would like to add a little to what Richard Dixon said about science. I am not myself an environmental scientist, but I manage environmental scientists—modellers and so on—and take responsibility for their work. Therefore, even if there are gaps in our knowledge, we know exactly where in our networks we need to go to fill them.

Claudia Beamish: Before I come to Jim Martin, I want to highlight for the public record—of course,

all the witnesses know this—the person specification for the board member role. It refers to:

“Awareness of environmental policy and/or law ... Evaluating complex sources of evidence to reach sound judgments ... Communicating with and influencing others ... Understanding of Parliamentary, legal and governance systems”

and

“Ability to work co-operatively and collaboratively with others”.

The person specification for the chair refers to:

“Experience of building and supporting a new organisation”

and

“A track record of leading and developing strategic investigations with objectivity”.

Of course, the other specifications are highly relevant, too.

I ask Jim Martin to make any initial comment on any gaps and ways in which you might address those.

Jim Martin: At a very early stage, the board will have to sit down and work out what kind of organisation ESS is going to be. That means beginning to think through what the strategy for the organisation should be and engaging with stakeholders in the sector to understand their thinking. Then, the board will have to sit down and look at ourselves and work out whether we have all the skills that we need. I think that we have a good starting breadth but, as we look at our strategic direction, if we feel that there are gaps at board level rather than executive team level, there is still scope for us to enhance the board numbers—I think that we have room for another two members—and to determine what skills we need.

Only once we have got into thinking through the practicalities of how the board will go about its business and take its decisions, and how the board and senior executive team together will provide the skills and expertise that the organisation needs, will we really be able to see whether there is a skills gap. If there is, I would not hesitate to go to ministers and say that we need to fill the gap and that we need an extra board member or two extra board members. An informed decision needs to be taken. At the moment, we have an excellent breadth of experience to draw on to set up the organisation and to begin to engage with our important stakeholders to understand what the organisation needs to do in future.

Claudia Beamish: Lastly, will you kindly clarify for the public record just how the appointments are made to the executive team?

Jim Martin: It is for the board to appoint the executive team. Ministers appoint the board, and the board appoints the executive team.

Claudia Beamish: Thank you all for your answers—that is helpful.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a fairly narrowly focused question. To be clear, I am not asking how the nominees have worked together in the past and how they might do so in future, because Liz Smith will come on to that. My question is almost a stress question and is for anyone who wants to answer it—I will come to Richard Dixon first. What weaknesses or areas where you are less strong do you have that, from your knowledge of other board members, you think that they can particularly fill and complement? I simply want to test how well you know each other as you come to the table, recognising that you have yet to meet and chat about that.

Richard Dixon: That is a good question, well put. As you say, we have not really met. We have just heard each other talk about our CVs and we have seen a bit of documentation about each other. As I said, Jim Martin has great experience in the area of setting up a public body, which is important. As you will understand, Paul McAleavey brings a great deal of understanding of the workings of the European Union. If one of the things that we are to look at is how we keep up with Europe as we evolve standards in Scotland, that experience and those networks will be absolutely crucial.

Marie Fallon brings a real depth of day-to-day experience of environmental regulation, which will be really helpful. Annalisa Savaresi is an expert in law—she is perhaps being self-deprecating in suggesting that there is a knowledge gap in relation to Scots law because her knowledge is extremely broad. She is the panel member with whom I have interacted before and so I am well aware of her skills.

We have a broad range of skills that are complementary. Those are the main areas in which people know quite a lot more than I do.

Stewart Stevenson: I am not going to go right round the table, because I am watching the clock a little bit. I am interested in hearing from Marie Fallon in particular. Coming from south of the border, what is your view, beyond what you have already said?

Marie Fallon: I understand the Scottish context in broad terms. I am familiar with the organisations on paper and I have worked with some of the Scottish agencies. What I am missing is the dynamics underneath all that and an understanding of the role that an organisation plays, and its concerns and expectations of ESS. I

have not met or worked with the other board members before, but I would expect them to help me to understand the dynamics of how things work in practice, who we need to work with more effectively and which bodies people are already working with effectively. I am really looking forward to getting to grips with that relationship.

From the very short time that the nominees have had to meet, I am confident we will get on well, will be able to understand some of those things and that I will be able to bring some of my experience from working in England to the party.

Stewart Stevenson: Jim Martin and Paul McAleavey have already touched on those points in their previous answers, but perhaps Annalisa Savaresi can comment.

Annalisa Savaresi: One of the main tasks of the new body is to address the enforcement gaps associated with EU exit. In many respects, we will be a unique body. It is important that we are led by Jim Martin because he has experience in setting up new bodies that need to hit the floor running. We need to get down to the job immediately and to learn by doing. I like to think that I am good at doing that; I have undertaken many roles in the past where there was a need to learn by doing. I am confident that, under Jim's leadership, we can set up a robust new body that is up to the challenge that we face.

Liz Smith (Mid Scotland and Fife) (Con): My question is for Jim Martin. In answer to the convener, Mr Martin, you said that you had a strong vision for ESS. I am interested in that in particular because as we have considered the bill, the area on which we have been most lobbied by members of the public and those with a general interest in part two of the bill, is the powers of ESS. I know that you cannot talk about that specifically just now but I am interested in what you see as the vision for the body, given the very high expectations of the public. Can you comment on that?

Jim Martin: Thank you for offering me the opportunity to do so. ESS needs to maintain Scotland's place as a leading nation that is recognised at home and internationally, as striving towards environmental excellence. We need to build on the EU environmental principles. I stress this point very strongly: the organisation must be independent—of Government or any other agency. We must be an impartial and robust body. We will need to have not only strength of character, but sharp elbows, too.

We need to be fair and we need to be seen to be fair, and that means that we need to be transparent. We need to be engaging; we cannot be a body that sits aloof and apart from everyone

else. We have to engage with stakeholders and the public and we have to listen.

08:30

Above all, we need to be a credible organisation and credibility can be built only through putting in place strong processes and procedures that are seen to be fair and that everyone understands are for the benefit of Scotland. The board needs to set the tone for that, internally and externally. We need to set a culture and set of values in the organisation that will help the organisation to aspire to the kind of vision that I suggest, and we need to live up to those values externally. I want to create an exemplar organisation that can, with credibility, become Scotland's environmental conscience, and I think that we can do that.

Liz Smith: Without going into any of the detail about what the structures might be, because we do not have time, do you have a strong view about what structures should be put in place to deliver what you have just set out?

Jim Martin: I do. There are a number of key things that the board will have to do quickly. We will have to start thinking about our strategy very quickly and we will have to engage with people on that to help us; we have to listen and learn and then we have to act on that. We have to work out what expertise we need in our senior team to help support the board and enable us to go forward. We need to work out what we will monitor and how we will monitor it and put processes and procedures in place to do that. We need to have a strong, robust investigation function with good policies, processes and procedures, and good expertise to lead that.

In other words, we have everything to do to set up a credible organisation quickly, and in relation to the composition of the board, between us we have the necessary skills but not all of us have all the skills. When we come to select the team that will deliver for ESS, we have to do that in the context of the breadth and gaps in skills that the board currently has.

Angus MacDonald (Falkirk East) (SNP): Congratulations on your nominations. There may be a perception among some members of the public that board members have conflicts of interest in relation to their existing roles. If any of you feel that that is the case, how might a conflict be mitigated to ensure an objective approach to your work on the ESS board?

Richard Dixon: Thank you. You make an important point, which is that there may be a perception that there are conflicts of interest. A real conflict of interest is a serious thing that we would need to deal with, but the perception of conflict of interest is also important. For me,

working for an environmental campaigning organisation, there may be more potential for conflict than for other members of the panel. We have thought about that quite a bit.

In relation to confidentiality and conflicts of interest, both of the organisations involved have relevant policies; as a public body, ESS will have rules to obey on conflicts of interest and we will no doubt develop our own conflict-of-interest policy more specifically. At both ends of that chain, the organisations are already putting in place safeguards about conflicts of interest and I am confident that we can manage any potential conflicts of interest very successfully.

I spent eight years on the board of SEPA and, at that time, Friends of the Earth was in the middle of trying to prevent fracking from taking off in Scotland—that is something that Angus MacDonald knows, I expect. There were discussions at the SEPA board where I would not take part or would declare an interest and we would decide whether I would take part in that discussion. The chair and I were alive to the potential for conflicts of interest. There were times when I was at a SEPA meeting and knew something useful but could not say it, because it came from my other job, and the same applied the other way around—at Friends of the Earth, I would be in a chat and would know something from my role on the SEPA board, but I could not say it.

I am very clear about compartmentalising my knowledge with regard to the strict confidentiality of information and also in the sense of being clear when there might be a real or perceived conflict of interest that we would need to address. Obviously, if I was in a board meeting, I would say that I might have a conflict of interest and explain that. Outside a board meeting, I would speak to the chair about whether there was a conflict of interest. Therefore, yes, there is the potential for a conflict of interest, but there will be systems in place, and I will be rigorous in being ultra-careful to ensure that we address conflicts of interest or potential conflicts of interest if they arise and that we respect confidentiality where we are sharing information.

Angus MacDonald: Do any other board members feel that there could be a perceived conflict of interest with their current roles?

The Convener: Jim Martin might want to give an overview, but no one is indicating that they wish to speak.

Jim Martin: I give the committee an assurance that, as with all public bodies, we will have a robust code of conduct, which will be applied rigorously. Because of our investigative function, it will be important that the organisation is seen to ensure that there are no conflicts of interest. In our investigative policies and procedures, the board

will have rules of engagement for investigations to ensure that conflicts of interest are known about and dealt with.

The Convener: That is helpful, thank you. Paul McAleavey wants to come in.

Paul McAleavey: Thank you, convener. I ask to speak not because I have any conflict of interest in the process, but to say that, as an EU employee, I am required to be absolutely independent. The staff regulations require that of me as a European Commission civil servant. I have to work autonomously, impartially and in an objective manner. When I move back to Brussels in January, I will need approval from the European Commission to take up a position as a non-executive director of ESS, precisely for the reason that I cannot have any conflict of interest in that role either. I want to make that clear and to put it on the record.

The Convener: Thank you for doing that. I will bring in Marie Fallon.

Marie Fallon: My interest is a minor one: I am a board member on the Northumberland National Park Authority, which obviously has a boundary with Scotland, and we share the interest of the River Tweed. Like other board members, I am confident that, if there is a conflict of interest, I will be able to declare it. I have worked in that context all my professional life, so I am confident that I will be able to deal with it, if the need arises.

The Convener: I will bring Claudia Beamish back in.

Claudia Beamish: [*Inaudible*.]—and I would like to further explore the objectives and priorities of the new watchdog with the witnesses. Witnesses might have addressed some of those in response to questions from my colleague Liz Smith, but if you have anything to add on those, that would be helpful. On another important issue, what are the key challenges that have not been covered so far?

Annalisa Savaresi: As I mentioned, the main objective of the new body is to hold Scottish public authorities to account on their compliance with environmental law. It is a rather unique task because nobody else has been in the position of transitioning away from the present system, which has the European Commission and courts at the top, if you like. It will be about the development of a domestic system to do the same thing. I acknowledge that we have a lot of work to do in that regard, but at the same time the board is uniquely positioned to deliver on that demanding task and to get down to the job soon. It is clear that the clock is ticking on this, as on so many other issues on EU exit, and we have to start work fast and learn by doing. As a group, we are strongly positioned to do that.

Claudia Beamish: Thank you. Next, I come to Paul McAleavey. Do you have anything to add on the objectives and priorities and the challenges for the new body?

Paul McAleavey: I have two points to add to what has been said. For me, the autonomy, impartiality and independence of the new body is essential. It has already been mentioned by Jim Martin and other nominees to the board. I have a lot of experience in that. I understand what it means to be an evidence provider for decision makers and sometimes to be put under a bit of pressure and I understand how to withstand that pressure. For me, independence is essential for this body.

My second comment is on the scope of the work. I do not mean to interfere in the parliamentary process, but my experience of working with the environment teaches me that you cannot deal with it in isolation. The drivers and pressures for environmental challenges are so broad in scope that the new body will need a broad remit to go into the particular sectoral issues that it needs to go into. The scope of the new body should remain rather broad. We will study the bill when it is adopted, but the two things that I would add are independence and scope.

Marie Fallon: I am comfortable with the objectives that Jim Martin outlined. We had a brief conversation about those late last week. I am keen to make sure that we do not lose sight of the outcomes that we are trying to achieve. When setting up an organisation, particularly at speed, we will often be moving quickly, but we want to make sure that, at the end of the day, we improve the outcomes for the environment for Scotland. I am keen to ensure that we do not lose sight of the need for the board to have the right measurements to be able to make a difference. As we develop the strategy, it will be important to develop a set of metrics or measurements that enable us to see the outcomes. That is not just about numbers but about real change and progress for the environment.

The biggest challenge is the fact that we are trying to set up an organisation in the middle of a pandemic. We are having to do things very differently—today is a good example. Setting up an organisation and getting people working together is probably more challenging than it would be in normal times.

Richard Dixon: I agree with everything that everyone has said. In particular, demonstrating our independence is an important early thing to do. One of the objectives for me is making links to the stakeholders, which Jim Martin mentioned. I have already suggested that I hope to be a strong link with SEPA to understand its concerns and optimism about ESS and how we might work

together in the future. Because of where I come from, I also hope to be a strong link with civil society environment and climate change networks such as Scottish Environment LINK and Stop Climate Chaos Scotland. Establishing those relationships early on would be one of my objectives.

An issue that has not yet been decided—it will be decided as the bill is finalised—is our role in climate change. There are different opinions on that and where we end up on it will be very important. We have to think about the role of the United Kingdom Committee on Climate Change, which advises but does not look at the effectiveness of legislation and regulation in the same sense as ESS. They are, therefore, different things and I will be interested to see where that issue lands when the bill becomes an act and ESS becomes a full body.

08:45

The final challenge will be getting stakeholders to understand clearly what ESS is. As Liz Smith said, there are a lot of public expectations about the body, but I am not sure that all those people have read the bill. It is not necessarily obvious from our title, environmental standards Scotland, exactly what we do—Annalisa Savaresi has summarised our role nicely—but one of our key tasks and challenges will be to get the media, politicians other than members of the committee and other stakeholders that we deal with to understand what we will do and what is not part of our remit that we cannot help with.

Jim Martin: I set out my priorities in my earlier answer. Although the bill is yet to go through stage 3, I have been working already with people to put together an initial secretariat team so that, if we get to 1 January, the body is able to begin its work in an advisory or non-statutory fashion. At that stage, I hope that we will already have key personnel in place on an interim basis to help the board to move forward. I anticipate that the board will meet early in January to begin its work.

Mark Ruskell (Mid Scotland and Fife) (Green): I will ask about vision and priorities. Jim Martin, you have answered most of my questions on that. However, there are two questions that arise from your answers.

The first is about your vision for working with this committee or its successor. How does the board intend to inform the committee and our work programme? The second question is about funding. All public bodies have challenging discussions with the Government about their funding needs, particularly in straitened times. How might the board approach that and what might be an appropriate way to identify your

funding needs and report on them, either to the committee or to the Government?

Jim Martin: The relationship with the committee will be important. As a board, we will not be directed by the committee—we are independent of it as well as of the Government—and I want to make that clear early on. I would hope that, as part of the transparency that I am looking for, there will be regular reporting to the committee and, whenever the committee wants to speak to me or other board members about what we are doing and where we are, we will share that with the committee as far as we can.

I would like to have an open, transparent relationship with the committee and to meet it on a reasonably regular basis so that members are aware of what we are doing. Where necessary and if we need the committee's support, then members of the committee will understand where we were coming from and how we have arrived at our position. I hope to have a fairly open relationship with the committee, if that is what the committee or its successor wants.

On funding, there is a financial memorandum to the bill, but I have not been involved in constructing it. Early on, the board will need to work out what we want to do and what that will cost. Marie Fallon has clearly spelled out a key point, which is that it has to be based on outcomes as well as processes and procedures. At a very early stage, the board will need to determine its strategy and, in parallel, it will have to have a clear financial programme that can be presented.

There is a figure in the financial memorandum of £1.5 million, which I believe is based on the establishment of other bodies. We will have different responsibilities and duties in ESS that we need to fund. If I believe that £1.5 million is insufficient, or if the board believes that, we will ensure that people understand what it is that we need in order to do our business effectively and efficiently.

I have been on public bodies in the past when budgetary discussions have become difficult—I would expect nothing else—but if we are going to create the new body and we are serious about it, we must ensure that we are funded to carry out the task appropriately.

Finlay Carson (Galloway and West Dumfries) (Con): We have heard a broad range of responses on the questions that we have had, and I think that this question is appropriate for winding up the session. What is your approach to developing the strategy and programme of work for ESS?

Jim Martin: The first thing that the board will need to do is to sit down and look at the bill, once it has been passed. The board will then need to

work out how we want to deliver on the responsibilities and duties that have been given to us. We will need to engage with all our stakeholders. By that, I do not just mean the public bodies, such as NatureScot, local authorities or the Scottish Government; I also mean the sector generally, including non-governmental organisations and other bodies with an interest. At that point, we need to listen to what people are saying to us, to decide whether that influences the way we go and then to present a coherent strategy, which I hope we will do in less time than is set out in the legislation. You have given us a year to develop a strategy, which is very generous, but I think that it can be done and needs to be done more quickly than that.

We must not lose sight of the reason why the body is being created. It is being created because, when we exit from the European Union, there will be a gap, and we need to fill that gap as quickly as possible. We need to do it in the right way, which means that the strategy must be right. From the strategy, everything else that we do follows. I see an engagement between the board, the sector and all interested parties as they help us to determine what the strategy should be.

The Convener: We have more or less come to the end of this evidence session, but if there is anything else that you wish to add, Jim, there is scope for that. I would particularly like you to reflect on a very important body being set up, filling in a governance gap, as you say. You have already mentioned making parliamentarians aware of your remit and getting to know parliamentarians. What about wider society? How do you see civic Scotland's understanding of what you do developing?

Jim Martin: We had only about an hour to chat to each other prior to this meeting, but one of the things that we mentioned in that hour was the need to have a strong, broad engagement strategy. We need a very good communications strategy, too. In the very early stages of creating our executive team, we will need to think about how that team will influence people and how it will get across the message about what ESS is—and, as Richard Dixon said, what it is not—to parliamentarians, the media and broader civic Scotland.

We are setting ourselves an awful lot of things to do in a very short period of time but, if we are going to develop a bottom-up strategy, rather than a top-down strategy, engagement and communication need to be among the first things that we prioritise in the organisation, so that we can get input from people.

What I want the board to do—although this will come as news to the board members, because we have not discussed it yet—is to think about what

we need to do for set-up and where we want to be in a year, in two years and in three years. Once we have those things in our head, we can build our initial structure, including our engagement strategy to facilitate that. That is something that I am thinking about, and it is something that the board will have to tackle at a very early stage.

The Convener: Thank you all for making time this morning. I know that it has not been easy to get everyone together very quickly after the nominations were announced, but I thank you for your flexibility this morning and for everything that you have told us.

The committee will consider the evidence that it has heard this morning later in the meeting.

08:54

Meeting suspended.

09:00

On resuming—

Subordinate Legislation

Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc) Regulations 2020 [Draft]

The Convener: Item 3 on our agenda is an evidence-taking session on draft regulations. I welcome the Minister for Rural Affairs and the Natural Environment, Mairi Gougeon. She is joined by two officials from the Scottish Government: Matthew Bird, biodiversity team leader; and Hazel Reilly, lawyer. Welcome to you all.

Minister, would you like to say anything before we move to questions?

The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon): I would like to make some introductory remarks.

The purpose of the draft regulations is to ensure that the safeguards against invasive non-native species that are set out in regulation (EU) 1143/2014 of the European Parliament and of the Council of the European Union are maintained in Scotland when the UK leaves the EU. The regulations achieve that by setting out the rules to prevent, minimise and mitigate the adverse impact on biodiversity of the introduction and spread of invasive non-native species in Scotland, whether intentional or unintentional. Although the EU regulations have direct effect in Scotland, certain aspects of the INNS management regime, such as enforcement and licensing measures, have already been implemented in domestic legislation, through amendments to the Wildlife and Countryside Act 1981.

The regulations that are being considered today apply only to Scotland, and a separate UK instrument covers the remainder of the UK. The UK regulations also apply in respect of areas that the UK Government considers reserved as they apply to invasive non-native species, including imports to and exports from the EU.

The Scottish Government's position remains that the content of the EU regulation on invasive alien species is devolved. However, in order to ensure legal certainty for stakeholders and to have a functioning statute book at the end of the transition period, we have decided to adopt a pragmatic approach. Therefore, the draft Scottish statutory instrument contains an application provision to ensure that the legislation is as clear as possible to the reader, and, in particular, sets out when the UK instrument applies and when the Scottish rules apply. The Scottish Government will

produce guidance for stakeholders to assist their understanding of the legislation and the application of the two codes.

The main effect of the 2020 regulations is to adopt the EU list of invasive species of concern as the Scottish list of species of special concern and to enable the Scottish ministers to amend that list by regulation. The policy intention is to maintain the content of that list so that it matches as closely as possible the list of species of special concern that will apply in the rest of the UK, while retaining the flexibility to list the species of particular concern in Scotland.

The regulations also provide that emergency measures can be introduced where the Scottish ministers have evidence concerning the presence or imminent risk of the introduction of invasive non-native species. Those emergency measures are a rapid way of introducing restrictions as a precautionary measure while a risk assessment is undertaken to consider whether it is necessary to add a species permanently to the list of species of concern. Any emergency measures that are introduced would be time limited for a period of up to two years. The effect of that would be to allow the Scottish ministers to take all necessary steps to prevent invasive non-native species from being kept, bred, placed on the market, used or exchanged, permitted to reproduce, released into the environment or transported within Scotland.

The regulations further provide that the Scottish ministers will be assisted on invasive non-native species by a committee and a scientific forum. They do that by referring to the Invasive Non-native Species (Amendment etc) (EU Exit) Regulation 2019, which will make provision for the relevant articles of EU regulation 1143/2014 to have effect for the UK as a whole. That will enable the Scottish ministers to appoint representatives to the new UK statutory bodies, the committee and the scientific forum that will be created after EU exit.

The amendments made by the 2020 regulations do not amount to a change in policy from the way in which the EU regulation currently operates. They correct deficiencies that arise as a result of EU exit to ensure that the legislation continues to operate effectively.

In addition to the issues that are covered in this statement, the amendments include removing or replacing EU terminology—for example, replacing references to member states and the European Commission with references to Scotland and the Scottish ministers, as appropriate—and revoking provisions with no relevance to the operation of the invasive non-native species regime in the Scottish context.

My officials and I will be happy to take questions from the committee.

Mark Ruskell: Thanks very much for that outline, minister. Will NatureScot and SEPA sit on the new committee or the scientific forum? I am trying to work out where they will sit in relation to the decision-making framework for the inclusion of invasive non-native species.

Mairi Gougeon: I am happy to explain how the committee and the scientific forum will be formed, and I will give a bit of background.

An invasive species programme board was established in 2005 to deliver the strategic consideration of the threat of invasive species across Great Britain. That board includes senior representatives from England, Scotland and Wales and relevant agencies that exercise responsibility in their own areas as representatives of wider interests. The programme board will remain as a separate non-statutory body that comprises members from Scotland, England, Wales and Northern Ireland. Even though the new committee would be a separate body established by the 2020 regulations, its members, who would be appointed by each of the Administrations, would be the same as the members of the programme board. We already have similar mechanisms in place for the scientific forum. It would be the people on the boards that are already in existence who would form the committee and the scientific forum.

We work closely with all the relevant agencies. Scotland would have representatives on each of those, and we do not envisage that changing. They would still have some input, and we work very closely with the other nations of the UK.

Liz Smith: I have a brief question. Obviously, the issue is extremely technical and quite difficult. Are you trying to overcome a time difference in ensuring alignment between what has been happening in the UK and what will happen in Scotland? I am always slightly worried when there are rules for the lawyers and rules for the rest of us.

Mairi Gougeon: Working through some of the secondary legislation is definitely not an easy challenge. To put things in very simplistic terms, there was a contested area in respect of what was reserved and what was devolved. Through the instrument, we have tried to make the process as straightforward as possible, and we have tried to make which regulations would apply in which circumstances as clear as possible.

For example, if somebody was looking to import to Scotland a species that was on the list of concern, the importing and exporting relate to the UK instrument, so they would have to seek a permit from the Secretary of State for Scotland.

However, if the person wanted to bring the species into Scotland and wanted to breed or keep it or have it for any of the other uses that are in the regulation, they would have to apply for a permit from the Scottish ministers.

I hope that that explains how the two sets of regulations would work alongside each other in practice and that it answers Liz Smith's question. I will be happy to give more details if that is not sufficient.

Liz Smith: Thank you.

The Convener: No other member wishes to ask a question.

We move to agenda item 4. I invite the minister to move motion S5M-23440.

Motion moved,

That the Environment, Climate Change and Land Reform Committee recommends that the Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 [draft] be approved.—[*Mairi Gougeon*]

The Convener: If members have any comments to make, this is the time to say so by indicating that in the chat function. It does not look like anybody has any comments to make.

Motion agreed to.

The Convener: I thank the minister and her officials for coming in front of us today.

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2020 (SSI 2020/387)

The Convener: Agenda item 5 is consideration of the Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2020, which is a negative instrument. Do members have comments to make on the regulations? I see that no one is indicating in the chat box that they have something to say.

That concludes the public part of the meeting. In our next meeting, which will be on 15 December, we will consider an updated work programme and arrangements for the publication of our report on our regional marine planning inquiry.

09:11

Meeting continued in private until 11:22.

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