



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy, Energy and Fair Work Committee

**Tuesday 15 December 2020**

**Session 5**



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**Tuesday 15 December 2020**

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**ECONOMY, ENERGY AND FAIR WORK COMMITTEE**

**39<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Gordon Lindhurst (Lothian) (Con)

**DEPUTY CONVENER**

\*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

**COMMITTEE MEMBERS**

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

\*Maurice Golden (West Scotland) (Con)

Alison Harris (Central Scotland) (Con)

\*Richard Lyle (Uddingston and Bellshill) (SNP)

\*Gordon MacDonald (Edinburgh Pentlands) (SNP)

\*Alex Rowley (Mid Scotland and Fife) (Lab)

Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Fiona Hyslop (Cabinet Secretary for Economy, Fair Work and Culture)

Graham Simpson (Central Scotland) (Con) (Committee Substitute)

David Stevenson (Scottish Government)

**CLERK TO THE COMMITTEE**

Alison Walker

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Economy, Energy and Fair Work Committee

*Tuesday 15 December 2020*

*[The Convener opened the meeting at 09:01]*

### Decision on Taking Business in Private

**The Convener (Gordon Lindhurst):** Good morning, and welcome to the 39th meeting in 2020 of the Economy, Energy and Fair Work Committee. Apologies have been received from Alison Harris and Andy Wightman. Graham Simpson is attending on Alison's behalf.

Agenda item 1 is a decision on whether to take item 3 in private and on whether to consider next steps for the committee's Covid-19 inquiry and issues for its legacy report in private at future meetings. Are we agreed?

**Members** *indicated agreement.*

## Scottish Offshore Wind Sector Inquiry

09:01

**The Convener:** Item 2 is our inquiry on Burntisland Fabrications, the offshore wind sector and the Scottish supply chain. I am pleased to welcome Fiona Hyslop, the Cabinet Secretary for Economy, Fair Work and Culture, who joins us in the committee room, and her Scottish Government officials from Marine Scotland, who are joining us online: Mo Rooney is the deputy director, David Stevenson is the head of energy supply chain, and David Pratt is the head of planning and strategy.

We turn to questions for the cabinet secretary. I beg her pardon—I think that she has a brief opening statement to make. I will hand over to her before we move to questions.

**The Cabinet Secretary for Economy, Fair Work and Culture (Fiona Hyslop):** Thank you, convener. I will be brief. I welcome the opportunity to give evidence to the committee on the current position on BiFab, as part of its inquiry.

Although it was unavoidable, I regret that the board of directors has put the company into administration. I have made it clear throughout the process that we need to improve access to work for the Scottish supply chain and that we need to protect the public interest in terms of financial exposure and the jobs that a successful business might support. Those priorities reflect our aspirations for offshore wind supply chain manufacturing in Scotland and for Scottish companies to benefit from the build-out of such projects, which will create jobs and boost our economy, especially in these challenging times.

Our support for BiFab has been significant—£37.4 million was converted to a 32.4 per cent equity stake, and a loan facility of up to £15 million was provided. That financial support ensured that the Beatrice offshore wind farm, the Moray East pin piles and the FIRST Exploration & Petroleum Development contracts were completed, creating more than 1,000 jobs across the three yards at Arnish, Burntisland and Methil.

As ever, ministers are required to operate within the law. No decision that is taken by ministers can be in contravention of state aid rules or any other legal provision, including international treaties by which Scotland is bound. I have considered all legal options for continued financial support for BiFab from the Scottish Government, and my conclusion that the Scottish Government can no longer continue to support the business is based on a range of factors including the current position of the business, its trading forecast, its prospects

for future work and the continued no-risk position of the majority shareholder. As a minority shareholder, we have been exhaustive in our consideration of the options that are available to us to support BiFab financially from public funds.

The United Kingdom policy context also presents challenges. The UK Government's damaging contract for difference rules work against Scotland and Scottish supply chains, meaning that companies such as BiFab have limited chances of securing work. The CFD option needs to ensure that project bids are not secured purely on the price per megawatt. The UK Government must consider the wider economy and its response to the climate emergency.

**The Convener:** Thank you, cabinet secretary.

An offshore wind summit was organised by the Scottish Government in January, I think. At that summit, the Scottish Government tasked the Scottish offshore wind energy council with undertaking

"a short, focussed, independent review".

Can you update the committee on where we are at with that?

**Fiona Hyslop:** That summit took place before I took up my position as Cabinet Secretary for Economy, Fair Work and Culture, and, as you are aware, I am not the minister responsible for energy. However, I understand that the Scottish offshore wind energy council is conducting a number of short, sharp pieces of work and that it will report on those. I am happy to ask one of my officials—particularly the energy lead, David Stevenson—to talk to you about that.

**The Convener:** Perhaps David Stevenson can update us on that.

**David Stevenson (Scottish Government):** Yes—I am happy to do so. Good morning, committee.

Because of Covid and a number of other issues that we all experienced over the summer, that working group has only recently kicked off. It will be chaired by Professor Sir Jim McDonald of the University of Strathclyde and will involve a number of key players in the sector from the developer community and the supply chain. It is hoped that the work will conclude around Easter time. The group will look at a number of areas in the supply chain and the challenges that they face. As I have said, it has kicked off and got under way only recently, and it hopes to conclude its work around Easter time.

**The Convener:** Will David Stevenson or the cabinet secretary give us a bit more detail about the people in Scotland who are involved in the offshore wind supply chain, what firms are

involved, what their particular specialisms are and how they will be brought into, or encouraged into, future projects?

**Fiona Hyslop:** A number of companies in Scotland operate in the area, particularly in developing and supplying. We think that there are more than 600 of them. There is a range of expertise, including in development and project management and in wind turbine installation and commissioning.

Professor Jim McDonald is the appropriate person to chair the group. My understanding is that it will look at specific areas of work and, as was indicated, report back at Easter time.

**The Convener:** What role may Scottish Enterprise have in all that? Why has its role perhaps not appeared to help in the BiFab situation?

**Fiona Hyslop:** Scottish Enterprise has helped. Working with Fife Council, it has invested over £2 million to improve the state of the yard, particularly the ground covering and concreting. It provides support for expertise in offshore wind, and there are supply chain meetings and meet-the-buyer events. It also looks at diversification support programmes. It is involved in a number of things. In July, I announced a £62 million investment in the energy transition fund, and Scottish Enterprise is heavily involved in that. That work looks at renewables, the transition for many companies in the north-east and hydrogen, for example.

Scottish Enterprise is involved in a number of areas. It looks at supply chain development and the general energy transition. It has been active and interested in looking to support BiFab, particularly bearing in mind who might be interested in taking on the yard and the company. It has also provided leads to the administrator. It is involved in a variety of ways immediately and in strategically looking at the supply chain aspects.

**The Convener:** I am aware that Scottish Enterprise has been involved with BiFab in some specific ways, but there has not been the success that we would have wanted.

**Fiona Hyslop:** We would have wanted BiFab to be successful under the ownership of DF Barnes and JV Driver, but that has not happened, for a variety of reasons. That is challenging for the workforce, which is why it is helpful to know that the administrator hopes to sell the company as a going concern.

There was Government involvement at the beginning, when the previous company's Beatrice contract was in difficulty. It was important to complete Beatrice, for a number of reasons—for the workers, but also to ensure that we could deliver on our climate change objectives and

complete that major offshore wind farm. The intervention had Government support. SE was involved in different ways, but decisions were made by the Scottish Government.

The subsequent discussions with JV Driver, which had been interested in BiFab before April 2018, also happened at Government level. We discussed how that company could come in to rejuvenate the yard. JV Driver wanted to do that and also saw it as a stepping stone into wider European development. All of that happened before my time as cabinet secretary for the economy, but the records show that that was happening in 2017 and 2018.

In the current situation, SE would work with the company if the company agreed to that, but the owners have been reluctant to engage with others. We tried to get third-party investment and to find ways to improve the cash-flow and working capital positions, but it was clear that we were coming to the end of what we could provide, both legally and financially. The £15 million loan that we had provided was maxed out.

That is the context. Scottish Enterprise is now helping to identify companies that might want to take BiFab over.

**The Convener:** In your opening statement, you referred to legal advice and the legal position. You have not shared that advice with the committee. Legal advice can vary, as different lawyers take different views. A witness told us that you had said to her that the French have more vociferous lawyers. The law and legal advice are not black and white. We have appeal courts because even judges differ. If the committee cannot see the legal advice that you received, how is it to be satisfied that the position in law is as you have told us that it is?

**Fiona Hyslop:** I do not remember discussing French lawyers.

There are some experienced members on the committee who will be familiar with the Scottish Government's position, which is that, although we can say that there is legal advice, we do not share that advice or its source. That is not particular to any Scottish Government or to this one; it is the position that was previously taken by the Scottish Executive under the Labour and Liberal Democrat coalition. The UK Government and others also take that position.

I understand that there will be different legal opinions according to the different information that is available, but the advice that we have been given clearly indicates that we would not be legally able to provide more financial support to the company. That would include the provision of assurance.

We provided an investment of working capital to the company while it was operating under new ownership. Anyone would expect the majority shareholder to provide investment and working capital and to ensure the company's cash-flow position; it is not the responsibility of the minority shareholder to do that. We provided loans to help the company, and we provided support.

09:15

**The Convener:** I understand the parameters that you have set out in response to the legal advice question, but how is the committee to be satisfied that the legal advice on which the Scottish Government based its approach and decision making is correct? As I said, legal advice can vary.

**Fiona Hyslop:** For 20 years, every committee has had in the same way to accept the position of the Scottish Government—and the previous Scottish Executive—when the Scottish Government has received legal advice that has meant that it could no longer do something in relation to state aid. It is up to the committee to gather its own evidence; the evidence that I give is about our position. There is a good reason for that position—otherwise, legal advice could not be provided to the Government in confidence. All legal advice would instead be written to be accessible by anyone at any time, which is not how most Governments operate.

**The Convener:** I understand your position. To check the initial legal advice, has the Government taken a second opinion or other opinions from different lawyers on the issues in question?

**Fiona Hyslop:** I repeat that I can let you know that we have legal advice but not what its source is.

**The Convener:** I am not asking for the source; I am asking whether you have taken separate legal advice to double-check the position.

**Fiona Hyslop:** We have absolutely thoroughly analysed the situation. The main issue in this case should be more obvious than in others when committees have looked for an indication of legal advice—it is whether, in a similar situation, another minority shareholder would do what we did or something different. The state aid issues are fairly straightforward. The question is whether, if the majority shareholder is no longer able or willing to provide investment through working capital or other support for the company, action is appropriate or is deemed to be state aid because there is no other source of funding from the majority shareholder or from third-party investment sought by that shareholder.

**The Convener:** Alex Rowley has a follow-up question. I ask that it be brief, please.

**Alex Rowley (Mid Scotland and Fife) (Lab):** The cabinet secretary mentioned contracts for difference and discussions with the UK Government. Have you presented a Scottish Government view on contracts for difference? Given that contracts for difference will have an impact on any other contracts that we are likely to get, is any progress being made with the UK Government?

**Fiona Hyslop:** That is a key question. The contracts for difference issue is not new; the provisions that were made—particularly to drive down the price of electricity—have been a difficulty for some time. Your Westminster colleague Ed Miliband was keen to ensure that contracts that were established for offshore wind reduced the price to the consumer, and subsequent UK Conservative Governments have shared that position.

My colleague Paul Wheelhouse has for some time pressed the UK Government on contracts for difference changes. It is positive progress that the UK Government has, in the past few weeks, embarked on a consultation on changes to contracts for difference, which should include ambitions for the percentage. Under the proposals, the UK Government could set targets for what it wants to achieve and ensure that that is demonstrated and can be enforced, whereas we would have more difficulties with that under our powers.

When people ask why other countries can do more, the answer is that their criteria for agreement for licences involve local protection, within state aid rules, to allow supply chain development. Because the UK Government's imperative has been to drive down the cost of electricity, there has been a race to the bottom in which everything comes down to the contract price and the tender. That is why we are seeing competition from the likes of China and the United Arab Emirates, where there are labour constraints that we do not want to see here. Obviously, they can provide much cheaper labour, which is a problem. We think that, globally, supply chains and quality of product will be issues that need to be addressed.

Far more can be done collectively across the UK to improve the situation. The contract for difference is out for consultation until, I think, 18 January. I will ask my colleagues in the energy and climate change directorate to share with you what improvements to the contract for difference have been seen to date and what we will be putting to the UK Government in that regard. In the work that my officials are doing with the UK Government, we will consider how we can support

BiFab with investment through the administration process, should there be an opportunity for someone to come in, and we will make sure that the contract for difference can be improved with regard to the future supply chain.

The problem is that we have legacy licences. Due to the time lag, the ones that we are seeing just now, such as for the Seagreen and Nearth Gaoithe projects, are subject to the historical contract for difference arrangements. I deal with business support and the economy, so the energy side is not my area of expertise, but there is a time lag between the setting of the licences and the awarding of the contracts. Therefore, it is important that the changes to the contract for difference are made as soon as possible, because they will potentially improve, for example, subsequent ScotWind leases as well as the supply chain situation, which is a major issue. I have followed the evidence that has been given to the committee—you have heard from the industry, including from JV Driver, and from the unions and me that it is key that such changes are made. The good news is that the UK Government has acknowledged that and has embarked on the consultation, which we can try to influence. I am not sure about the timing of the committee's report, but the committee can influence the consultation as well.

**Maurice Golden (West Scotland) (Con):** Cabinet secretary, you have just touched on the issue of supply chains. In particular, the downturn in oil and gas and our net zero targets will mean that diversification of the supply chain is increasingly more important. What research has the Scottish Government done on how other European countries are supporting their indigenous supply chains?

**Fiona Hyslop:** Again, that is not necessarily my area of expertise. I can touch on it, but I might bring in my officials if they have something to contribute.

One of the differences that we are aware of is that it is about licensing, and what we can put in the licence. It is a question of whether the driver is cheap electricity or an imperative relating to the supply chain. In some areas, I think that the dial is shifting from the UK Government's perspective, which is welcome.

The number of offshore wind opportunities off Scotland and the north-east of England is substantial. Other European countries, including those in the European Union, are interested in the supply chain for offshore wind and the storage of hydrogen, so there is a common interest in developing those sites, and the opportunities to do so are strong. With regard to the comparator countries, we are working at different levels.

Skill levels are important, too, and can be very attractive. Recently, I have been talking to developers who want to come into Scotland in the future. In my experience, the attractiveness of Scotland is its skill base, and I understand that other countries can be limited by their domestic skill base. Therefore, there are factors other than the supply chain. For a successful renewables sector, I would like to make sure that we are operating in a number of areas, by ensuring not only that the contract for difference advantages supply chains but that we are developing our skill supply. Those are some of the differences with comparator countries.

My officials from the energy directorate might wish to reflect on what they know about any research that has been done in relation to other countries, and add to my comments.

**David Stevenson:** We do not really have information on comparisons with other European countries. The working group that is chaired by Sir Jim McDonald was referred to earlier. I am sure that, with his permission, we can send the committee the terms of reference for the group's work. The basis of the work is to understand the challenges and barriers that our supply chain faces. There is a core executive committee of 10 people—I can run through the list of names, or we can pass on that information. In looking at those challenges and barriers, the working group will consider, not just offshore wind but what we can learn from other technologies, including aerospace and automotive and even food and drink, how these companies operate and how we can work collectively to ensure that our supply chain is fit for purpose and we can maximise the results from the offshore wind opportunity. That is the main purpose of the work of Sir Jim's group, and I am happy to share the terms of reference, subject to his approval. I do not envisage that that will be a problem.

**Maurice Golden:** Can you clarify that, to date, the Scottish Government has not carried out research into supporting supply chains and how that is done in other European countries?

**Fiona Hyslop:** The answer depends on what you mean by "research". Are we aware of what other countries do? Yes, we are, generally, but we have not carried out a discrete piece of research. That is one of the areas that the working group will work on, chaired by Professor Jim McDonald, who has great experience internationally and not just in Scotland.

**Maurice Golden:** On an interlinked point, the GMB union told the committee in evidence that almost every offshore wind turbine in Scotland had been built by a state aid-backed company. Why are other countries that have state aid-backed companies able to produce offshore wind turbines

when Scotland is not? Does it come down to price?

**Fiona Hyslop:** There has been a strategic decision to take stakes in companies or, indeed, to have nationalised energy companies. If we look at the success of Norway and even some of the French companies, we will see that Governments have made the strategic decision to own or have stakes in energy companies. Obviously, as the committee is aware, there is a balance between reserved and devolved areas with regard to intervention and the quantum needed to take a majority stake in a major energy company. I am not sure that nationalisation of energy companies is something that the UK Government would consider or, indeed, that previous UK Governments of other political persuasions would have done. That is the difference, and that is fundamental to how other countries have managed to export their energy resources. Norway is a clear example of that, and that strategic positioning and ownership has been maintained and achieved over decades. We can also see that in France, in particular. They are examples of what other countries can do. In that way, they can look at what they can do to support the supply chain.

I wish to be fair to the non-state-owned energy companies in Scotland. SSE is a good example in that, in different areas, as we have seen in different contracts, it has tried to support domestic supply chains where possible. However, it is accountable to its private shareholders, who are looking for returns. That is who it is answerable to—it is not answerable to the Government. If a company has a contract for difference, it does not mean that it must support the domestic supply chain; a contract for difference incentivises it to do something different, which is actually to give work elsewhere. To be fair to SSE, we were very clear that we wanted the Seagreen contract to provide some work for BiFab, if possible. If it could have done that, on a price basis, it would have done. However, when we pressed it again, the price quantum increased. Obviously, that is the difference when it comes to companies with private shareholders.

The committee might want to make a recommendation that the UK should embark on state-owned energy companies or should take significant stakes in energy companies.

**Maurice Golden:** In the context of a future for BiFab, you will be aware that, in other sectors, such as aerospace or textiles, Scotland struggles to compete with low-margin, high-volume production. Do you see a future for Scotland in more high-end, niche supply chain markets or could Scotland compete for the more general fabrication market?

09:30

**Fiona Hyslop:** I am very supportive of fabrication work, but you make a reasonable suggestion that high-skilled engineering is the area where we can compete. That is why, in offering support to the sector, it is important that we look at different areas. We need to consider how the skill base in Fife can be used for fabrication, but we must do that in such a way that we are not competing with labour costs of £2.70 an hour. That becomes a real issue.

There is also a global issue in relation to transportation. Governments will want to face some of the challenges of climate change co-operatively. We have a free market for fabrication for the sector when it comes to where it is delivered and at what cost, but transportation costs are part of that. It is not in the gift of the Scottish Government to determine those, but collectively and globally there is a question as to why we are transporting fabrication from one part of the world to another and whether we should consider the energy that is used in doing that. That might relate to some of the strategic thinking about how we tackle climate change in relation to transportation.

In the domestic market, we have high-end engineering skills. Consider what we are doing with the National Manufacturing Institute Scotland—low-cost, zero-carbon delivery and lightweight carbon manufacturing. There are many areas in which our expertise is extremely strong. I am not the minister for energy, but I know that our capabilities in that area are very strong. I want to see us play to our strengths and that is why I want to work with the administrators of BiFab to ensure that we play to our strengths in attracting companies to take on that site that can see the potential for a growing the domestic supply chain with a contract for difference that is altered to ensure that there is an incentive. We are already seeing increased interest in doing work in Scotland precisely because the levers are changing. Businesses want the requirement to ensure that there is a Scottish supply chain.

Maurice Golden's point about ensuring that we are providing a high-end engineering expertise skill base is important. That is part of our consideration of how we grow the sector and ensure that we have the skills training.

I am not sure how much I can say on this, but the climate change plan is being published soon. I think that there will be a statement this week, although I have lost track of the timetable and I do not want to pre-empt anything. The skills aspect of that is very important. There will be accompanying support on skills. We need that to ensure that we have the volume of people being trained in high-end skills and that those skills continue. I

apologise to the Presiding Officer if I have pre-empted the statement or said anything that I should not have done.

**Maurice Golden:** Thank you, cabinet secretary, for whetting my appetite about the climate change statement. I have a very brief supplementary question. On transportation costs, when I worked for Zero Waste Scotland—I refer members to entry in the register of members' interests—I was speaking to a company in Montrose that said that it was cheaper for it to ship via container to China than it was for it to transport its steel pilings by lorry to Glasgow. I am not necessarily asking for a reply specifically on that case, but has any research been done on transportation costs that might be relevant to BiFab? Perhaps you could write to the committee on that.

**Fiona Hyslop:** I will ask our transport and energy colleagues to identify that and follow up on it. In a global context, transportation is an issue, as is where the energy is being used. We are providing and sourcing renewable energy but, in a global sense, the energy costs of shipping containers to China are expensive. Obviously, the energy that is used is the expense, but then there is the cheap oil or whatever is being used in. Those are some of the things that need to be looked at globally if we are to tackle the issues as a planet. Who knows where these debates might go in the climate change negotiations? It is worth looking at the issue, but I do not know the details. I will ask my officials to follow that up.

**The Convener:** The next question is from Colin Beattie, who joins us remotely.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** BiFab is now in administration, and I believe that administrators from Deloitte have been appointed. Can you provide a timeline of the events and factors that were involved in that from the Scottish Government's perspective?

**Fiona Hyslop:** I am just thinking about when you want the timeline from. I will start with the issues in the summer, when there was concern that the Seagreen contract would not be secured. That contract was important, because it would have provided a future pipeline of work and would have supported the company's cash flow. It was becoming clear that there were real issues with working capital. I repeat that the working capital for the company had been provided by the Scottish Government, including a £50 million loan during the spring of 2020.

In August, we were clear to the majority shareholder, JV Driver, that we had concerns about BiFab securing the Seagreen contract and that that would have knock-on effects on the NnG contract. We were also concerned about the

company's balances and cash flow, with which issues had been evident for some time. We were reassured continually by JV Driver that it would seek alternative funding to help to cover the company's cash-flow constraints, but that never came to fruition. We worked co-operatively with JV Driver to look at all the options and at what would be required for them. At one point, JV Driver suggested that we could transfer its shares to the Scottish Government and that the Scottish Government could take over BiFab, but that would not have allowed us to provide state aid-compliant additional funding for the company, either in assurances or in working capital.

We looked at a number of scenarios to try to secure the NnG contract, because obviously that would have made a considerable difference to the immediate issue, particularly for the workforce, by providing activity. When it became clear that the cash-flow issue was becoming perilous and that there was no prospect of a continued pipeline of work for the company, obviously the board had to make a decision about what to do. Clearly, the board took the decision to go into administration on the basis of the difficulties that the company was in.

The administrators have now been appointed. I think that that was announced yesterday, so it is now public. I was due to make a statement to that effect this afternoon in Parliament, but I think that the timetable for Parliament has moved and the statement is now tomorrow, or the Parliamentary Bureau will consider that.

Obviously, we have made contact with the administrators and we are trying to ensure that they understand the importance of securing the future and what would be in the interests of the workforce. We are working with the Scottish Trades Union Congress to ensure that the needs of the workforce are identified as part of what might be the solution. We are also working with Scottish Enterprise and Highlands and Islands Enterprise, because there might be interests in the individual yards at Arnish, Methil and Burntisland. We are trying to work with the administrators to ensure that there are no redundancies. There are approximately 30 permanent staff with BiFab and many contractors are involved. We are working to ensure that there are no redundancies. We are trying to influence the situation to secure the best outcome for the yards, the workforce and the wider production supply chain.

I think that that gives you a narrative, Mr Beattie, if that is what you were looking for.

**Colin Beattie:** I was interested in one thing that you said there. Please correct me if I am wrong on this, but my understanding from what you have said is that JV Driver was working to raise working capital.

**Fiona Hyslop:** JV Driver told us that it would look to achieve additional funding for the company, but that was never realised.

**Colin Beattie:** I would like you to clarify something that we were told by DF Barnes. It said:

"The final purchase discussions and agreements always envisaged that the Scottish Government would be the primary financier of the business as it recovered from the Beatrice project".

That does not seem to agree with what you said earlier about your understanding. Do you agree with that statement by DF Barnes?

**Fiona Hyslop:** What I have just relayed relates to the most recent issues to do with administration. Way back in 2017, when the company faced potential insolvency, support was provided to deliver the Beatrice contract in particular, and to broker finances between the parties that were involved at the time. JV Driver subsequently took on the majority shareholding. The agreement at the time and the pre-acquisition business plan—I know that the committee asked us to share it; that is not in our gift, but is a matter for DF Barnes—specifically said that JV Driver would provide capital and assurances, and would use its parent-company bond guarantee. It said that it would provide financial support for the company.

From a straightforward business point of view, it would be highly unusual for the majority shareholder not to be the first port of call for assurances in the industry and for provision of working capital, particularly when the company was becoming cash insolvent, which led it to go into administration. It had maxed out the funding that we had provided through our more recent loan, which was to help it to secure the Seagreen contract. It was quite clear from the pre-acquisition business plan that DF Barnes would take responsibility for providing assurances and capital through its sources and through its parent body, and that it would help to get contracts, which was key to the success of the company.

I think that when DF Barnes gave evidence to the committee, it might have been referring to the Beatrice contract, for completion of which we ensured that funding was available. We were the primary source of funding for supporting completion of the Beatrice contract, but that was way back in 2017. That was not to keep the company running for the subsequent three years—that was not part of the business plan proposals.

**Colin Beattie:** When we took evidence from DF Barnes just a week or two ago, it made it very clear that it was always intended that the main financial backer of BiFab would be the Scottish Government. It made it clear that that was its understanding of the situation right up until the

company went into administration. That does not square with what you are saying.

**Fiona Hyslop:** I am aware that Colin Beattie has worked in business, so he will know that it would be highly unusual, in any company, for the minority shareholder to be the main financing arm of the company.

DF Barnes said that it would provide assurances, and it did—for example, for the Moray East pin-pile project—but risk became an issue because of the financially perilous situation that the company found itself in, which affected the ability to secure future guarantees in the way that would be expected. Many people looking at the situation would wonder why on earth the Government, as the minority shareholder, would need to provide assurances because of the inability of the majority shareholder to do that and because of the risk profile of the company. If the parent shareholder, DF Barnes, is not prepared to support the company through assurances or even with working capital between contracts, that is a real problem. Despite what DF Barnes said to the committee, if it were to provide the committee with the pre-acquisition business plan, that would make it absolutely clear that such provision was part of the arrangement.

Subsequently, during 2018, the loans were transferred into equity. Again, that was to support the company. However, the idea that the Scottish Government would be the main financier for the company for ever and a day is not correct.

09:45

**Colin Beattie:** We have already discussed a great deal about state aid and its limitations. DF Barnes was clear that the primary reason why BiFab did not succeed was lack of, if you will, state aid from the Scottish Government. It seems that the company made the situation all hinge on that one issue. However, it seems from what you are saying that far wider issues were involved in getting to the point at which the company went into administration.

**Fiona Hyslop:** I have consistently said that administration was the culmination of a number of factors. Obviously, they included the company's reluctance to provide assurance and its having taken a no-risk position. Another factor was the timing of the energy contract, which was delayed for a number of reasons. In addition, the pandemic has had an impact on a number of related areas. BiFab not securing the Seagreen contracts had an impact, too.

On state aid, the criticism from DF Barnes was relayed to the committee as it was relayed to me in discussions. Even as far back as the summer, when I spoke to the company, it had thought that it

would be easier than it is to secure contracts in UK waters. Its experience in Canada is different. I am not saying that this is about state support, but how companies can secure contracts there is different to what happens in the UK. It found the UK operation of state aid rules to be far more restrictive than it had previously thought it would be.

I spent quite a lot of time trying to explain to DF Barnes that that is not necessarily in the Scottish Government's gift. We are, I suppose, doubly constrained in state aid matters, because the Scottish ministers have, under the Scotland Act 1998, specific responsibilities that the UK ministers do not have. Even so, we both operate within the constraints of state aid policy. DF Barnes found that to be problematic and not what it had expected.

**Colin Beattie:** My understanding is that the UK Government supports the Scottish Government's position on state aid in this case. Is there any indication that DF Barnes lobbied the UK Government?

**Fiona Hyslop:** I am not aware that it did. In a meeting, we expressed the view that state aid would be problematic for the UK Government, too. The unions suggested that we approach the UK Government, although subsequently, they have been critical of the fact that we did that. However, I think that it was, at the time, reassuring to the unions and to the company that we approached the UK Government.

I am not aware that the company approached the UK Government, but the UK Government looked into the state aid issue. It took the view that it was legally and financially not possible for it to provide support. The other option was that the UK Government step in to provide support, working capital or assurance. I asked the UK Government whether it could do that because the Scottish Government had reached the limit of what we could do; that was my position. Ministers are responsible for their decisions at the point at which they take them. The UK Government was a bit more able to flex to provide support because it would need to be taken to court, or someone would need to challenge its decision. Its responsibilities in relation to state aid are slightly different.

The UK Government understood the differences between the Scottish ministers' tighter roles, as ministers under the Scotland Act 1998, and its position, but it took the time to consider the matter. In my initial discussion with Michael Gove, he thought—he could see—that it would be difficult for us in terms of state aid. However, the UK Government, through different departments, took time to consider the issues. I appreciate the work that it put in to consider what was possible and

whether it could step in. Its judgment, however, was that it could not.

However, I did not want to leave it at that. Therefore, we have agreed to take up and work on the suggestion of having a working group consider the issues of general supply chains and what can be done in relation to BiFab.

If Colin Beattie is asking whether the UK Government agrees with us, the answer is yes—it does.

**The Convener:** You referred to a pre-acquisition business plan. Have you seen that plan?

**Fiona Hyslop:** Yes.

**The Convener:** Can you share it with the committee?

**Fiona Hyslop:** I wrote to the committee on that matter; I am not sure whether you have seen the letter, but I know that you are keen to see the plan. We have approached the acquirers for their agreement to release the plan, but we have not had agreement on that, to date. I am relaying my knowledge of that business plan.

**The Convener:** Do you appreciate that it is difficult for the committee to come to a view on that if we have not seen that plan, even if you share with us your view of it?

**Fiona Hyslop:** Yes. I encourage DF Barnes to provide the pre-acquisition business plan to the committee, as is within its gift.

**The Convener:** Are you saying that you cannot provide that plan to the committee?

**Fiona Hyslop:** It would be inappropriate to do so. Remember that we have business relations with many companies. If they became aware that we were providing to Parliament commercial in-confidence information that became public, that would affect our relations with those companies. We have to operate with a degree of trust with any commercial company that we work with. I am keen for the committee to see the plan, so I will do what I can to ensure that you can get it, but I am under constraint and will take advice on what would be appropriate. I hope that you understand my reluctance to offer the plan without the company's agreement.

**Graham Simpson (Central Scotland) (Con):** When DF Barnes appeared before the committee, I tried to get an answer on how much it had invested in BiFab, but it would not answer the question. No wonder—the answer is £4. For that £4, it got a 67 per cent share of BiFab. The Scottish Government put in £37 million and got a 32.4 per cent stake. There is a big discrepancy there. Why is that?

**Fiona Hyslop:** That would have been the agreement that was made at the time for the company to run the Beatrice contract and ensure that it was achievable, which was important for a number of reasons, including jobs in Fife and delivery of that major wind farm being hugely important to development of the whole sector. It was symbolically important that the project be achieved and delivered. On discussions about share ownership, the other option that could have happened, but did not, was state ownership of the company, which the ministers at the time decided against.

**Graham Simpson:** How is it that the Scottish taxpayer can pay an average of £278 per share and DF Barnes can pay £1 per share, and we—the Scottish taxpayer—get a minority stake in the company and not even a seat on the board, when that Canadian company gets a majority of the company for £4. What is going on?

**Fiona Hyslop:** The issue was to ensure that the yard was saved, the jobs were supported and the Beatrice contract was delivered. In order to ensure continued operation of the company, a takeover was required. DF Barnes had previously been interested in BiFab back in 2016, but unfortunately that takeover did not take place because of the untimely death of a senior manager at BiFab. By the time when DF Barnes became involved in the work to take over the company, it had become highly unlikely—and it would have been extremely difficult—that any company would take over BiFab because of the financial state that it was in. That is why, at that time, in order to deliver the Beatrice contract, we provided loans, which were subsequently drawn down as part of the equity.

We understand that, in relation to the agreement on the pre-acquisition business plan, the benefits to the taxpayer of bringing in DF Barnes were continuation of the work, assurances that it could provide that it would deliver and achieve major contracts, and support for the livelihoods of the many people who relied on BiFab. That is what we invested in as part of our Government support. We also helped to deliver, as listed in my introductory remarks, the contracts that were so important to development of offshore renewable energy. I have already relayed that.

If Graham Simpson's position is that we should have just walked away and let the company fold, or that we should we have taken it into state ownership, that is what would have been left had we had not done what we did. We brought in DF Barnes's expertise, acumen and knowledge of the market, and what it could do to run the company. It was to be the board that ran the company; we would not be directly involved in that, because DF Barnes would be responsible for it. That was the arrangement.

Had we not done that, one alternative would have been to let the company fail, which would have led to the Beatrice contract not being completed satisfactorily. The only other alternative at that time was state ownership, which the ministers who were involved at the time did not want. I am not sure which of those alternatives you would prefer.

**Graham Simpson:** I have not argued about whether you should have stepped in. My question was about the deal that you ended up with. It seems to me to be a pretty rotten deal, if the taxpayer put in the vast bulk of the money—£37 million in shareholding, plus extra that takes it up to £52 million—and gets a minority stake, while the other side pays £4 for a 67 per cent share of the company. That is a rotten deal, and has nothing to do with whether you should have stepped in.

**Fiona Hyslop:** The vast majority of funding that was provided was not to the company and was not for the benefit of JV Driver. The majority of the funding was to complete the Beatrice contract, completion of which was strategically important.

**Richard Lyle (Uddingston and Bellshill) (SNP):** Cabinet secretary, we know why the Scottish Government got involved—that has already come out. It was to save the company, which would save jobs and mean that contracts could be completed. How many contracts has BiFab bid for since the Scottish Government made its investment and how many it has won, if any?

**Fiona Hyslop:** I might ask my officials to come in on that. Since I took responsibility, there have been the Seagreen and NnG contracts. This time last year, there were good prospects that BiFab could secure both of those and have the working capital that would allow it to deliver them, but that position deteriorated quite badly this year.

To be fair, the issue comes back to timescales. Even the Scotland contracts that are coming through will not necessarily be delivered for some time. The sequencing of contracts is important to the company's viability. It got the FIRST Exploration & Petroleum Development and Moray east pins contracts. I might need my officials to provide a timeline for the company bidding for those contracts, which could be helpful to the committee. If they cannot, we will give you that following the evidence session.

**The Convener:** Is one of the officials in a position to assist the committee on the point that the cabinet secretary has raised?

10:00

**David Stevenson:** Over the period since DF Barnes took acquisition of it in April 2018, BiFab

has bid for numerous contracts. It has a register of every contract that it has bid for. Obviously, there are different stages in that process, starting with submitting the initial bid.

I saw a spreadsheet some time ago that showed the numerous contracts for various offshore wind and oil and gas component parts that the company had been bidding for. As the cabinet secretary alluded to, BiFab was only successful in securing two of those contracts: the Moray East pin piles, which was won in the latter half of 2018, undertaken during 2019 and concluded at the start of January, and the FIRST E & P contract, which was for a Nigerian oil and gas mid-water arch, to be technical about it. BiFab secured that work in 2019 and undertook it in the latter stage of 2019 and the early part of this year, before it set sail for Nigeria.

We would need permission from the company to provide its register of the numerous contracts that it tendered for. As I say, there are different stages to go through in the process of securing them, or not. Obviously, if a tender is not progressed, the company falls out of that equation.

**Richard Lyle:** It would be good to know who won the contracts that BiFab bid for. Can that information be supplied to the committee?

**David Stevenson:** It depends on who ultimately got the contract. For example, BiFab bid for the Kincardine project, which the committee may be familiar with. It was a floating offshore wind farm contract that was ultimately secured by a Spanish and Portuguese fabrication company. The Spanish one was Navantia, which you have probably heard of. BiFab also bid for the Hywind floating development contract, but there was a problem due to the depth of draft that the spires required. That was ultimately undertaken by a Norwegian contractor, I think.

Those are probably the two most prominent contracts. You touched on Seagreen, as well, which was ultimately secured by a variety of fabricators in the middle and far east. A myriad of contracts were tendered for but not secured between those, but I do not have information available on the ultimate beneficiaries of every contract that was tendered for.

**The Convener:** Does Mr Simpson have further questions on areas that he has not already covered with the cabinet secretary?

**Graham Simpson:** I want to explore the state aid question again, if that is okay. Cabinet secretary, you have confirmed that you took legal advice, but you are not prepared to share that advice. The committee heard that the GMB union also took legal advice, which was shared with us. That was from Lord Davidson, who said:

“For the guarantee to be unlawful as described ... the critical predicate fact is that the market in the provision of guarantees and performance bonds would refuse to provide such a guarantee to BiFab. This assumes ScGov has tested the market in some manner as regards BiFab.”

Did you test the market? Did you assess the market position?

**Fiona Hyslop:** I say again, for clarity, that it is not that I am not prepared to provide the legal advice, but that I cannot provide it without breaking the ministerial code, as the member will be aware. If I start to discuss other legal advice, I start to relay the content of legal advice. Again, I am not allowed to do that under my responsibilities under the ministerial code.

It is fair to say that the legal advice that was provided to GMB, which has been widely shared, was based on partial information. I have relayed information to and had regular contacts with local MSPs and MPs. After my first meeting, I wrote to them to explain the context of legal advice for the Scottish Government in relation to what we would do, particularly in a situation in which no other investment is available.

The issue is whether other investment was available, whether the Scottish Government operated in a way that anybody else would have operated in if they had been in that position, and whether any minority shareholder in that situation would have provided investment in any shape or form. Given that the majority shareholder took a zero-risk position, we were in a very difficult position.

Partial information was available to Lord Davidson and the counsel in question; they did not have the information that we had. I have indicated the concerns that we had. As I have said consistently, the company’s cash-flow situation was very difficult indeed. Such information would not have been available to people who were providing commentary or legal advice. I think that that is the maximum that I am allowed to say without causing issues under the ministerial code.

**Graham Simpson:** I have not asked you to share your legal advice, and I will not ask you to do so. I am asking you to address the point that was made by Lord Davidson. My question was whether you addressed the market position. I take it from what you have said that the answer to that is “no”.

**Fiona Hyslop:** I can tell you that we look at lots of different issues in relation to state aid.

**Graham Simpson:** I will put another of Lord Davidson’s points to you. He said:

“It is perhaps remarkable that the decision by ScGov to withdraw the guarantee based on the EU State Aid regime took place when that regime will cease to apply to Scotland

on 31 December 2020. If it had been so minded ScGov could have deferred the decision until after that date.”

Those are his words. Why did you not just wait?

**Fiona Hyslop:** I think that you will find that the board has put the company in administration. There are obviously multiple issues relating to administration, but it reflects the cash position of a company at a point in time. I have said consistently that the company was in a difficult position. That position was date sensitive to the point at which the board made its decision. In relation to NnG and assurance, there was a point in time that a decision had to be made. That decision was made just before the contract was given.

The most apposite and important point is that, as we are sitting here on 15 December, we have no idea what the state aid and level playing field arrangements for the UK will be, but the transition period is due to end in 17 days. No company can make any decisions that are reliant on state aid, given that we have no idea what the position will be. It is not the case that there will be no state aid; the issue is the type of state aid rules that will apply. At the point at which decisions had to be taken, nobody knew what the state aid position would be.

Had the UK Government thought that there would be an opportunity for it to intervene because of changes to state aid, for which it is responsible—it knows the system that it would like to put in place—it could have provided legal state aid financial support at that time. In my meetings with Michael Gove—we should remember that he is heavily involved in exactly the areas that Graham Simpson is talking about—he said that he would not do that, which indicates that it would not have been appropriate to delay the decision until after January.

You have to make decisions at the point in time that you are making them. We could not have acted on a wing and a prayer based on what the state aid rules might be in the future. Anybody who thinks that they know what the state aid rules will be is obviously far more knowledgeable than the rest of us.

**Graham Simpson:** I agree that we do not know what the position will be, but I was very clear that I was quoting Lord Davidson. I will leave it there.

**The Convener:** The next questions are from the deputy convener, Willie Coffey, who joins us remotely.

**Willie Coffey (Kilmarnock and Irvine Valley) (SNP):** The UK took a decision four years ago to leave the European Union. There are 17 days to go and we still do not know what the arrangements for important matters such as this

one will be after 31 December. Do you have any confidence that we will soon know what the arrangements might be after the end of December?

**Fiona Hyslop:** I am in the same position as the committee. It is appalling that businesses and Governments are having to make decisions without knowing what the rules and arrangements will be.

The final intricacies of the trade deal are between the UK Government and the EU. We do not know what that will look like. One key area of the negotiations is what is known as the level playing field, which is about business competitiveness and the advantages that can and cannot be provided to the UK.

One of the EU's great strengths is its single market. It is the biggest single market in the world. The EU is intent on protecting it and wants to ensure that the UK is not given any advantageous access that might undercut EU companies in an anti-competitive way.

It is remarkable that we are sitting here just days before our EU exit but we have no idea what state aid might be. Some commentators imply that the rules might allow no state aid. Even World Trade Organization provision on anti-competitiveness is more open than that. If we end up with no deal and under WTO rules, legal intervention might be more possible. Many in other parts of the world see state aid as anti-competitive. That is the context that we are in. However, that is a more general point about the difficulties of EU exit and of not knowing, after four years, what our trading arrangements with the EU will be and what subsidy arrangements might be allowed for companies at any time. It is difficult for any company to make decisions on that basis.

**Willie Coffey:** You have made your position on state aid clear. It is often held up as a bogeyman or as the straw that breaks the camel's back. The letter that you sent to the committee on 8 December seems to say clearly that an assurance package was possible prior to your determination that BiFab's performance and prospects had deteriorated.

Can you clarify that? Could further state aid or assistance have been possible had the company's performance and investment plans have been adequate to allow that? Is that what we are saying?

**Fiona Hyslop:** Yes. We were legally prohibited from continuing to provide the company with financial support. We were prepared to provide that support. Our decision was a legal and not a financial one.

**Willie Coffey:** Did that position change principally because of the company's performance? Your letter says:

"However, the subsequent deterioration in the performance of the company coupled with the loss of the Seagreen contract, meant that it was no longer possible to provide an assurance package in a way that was state aid compliant."

Had an assurance package been possible prior to that change in circumstance?

**Fiona Hyslop:** Had the company been in a better financial position with a pipeline of future work, and had it been a company that anyone was prepared to invest in, that would have been a different set of circumstances that would have allowed us to support the company. We made it clear to JV Driver that it must ensure that BiFab was financially supported and that it was in a position to continue trading. Only two contracts were secured during JV Driver's ownership of BiFab so there were concerns that there was no future work pipeline. We were prepared to provide financial support, had there been future work. That is why it is so disappointing that BiFab did not get the Seagreen contract.

That had ramifications for the company's viability, although I am clear that those ramifications are not SSE's responsibility. The viability of the company was the issue and that led the board to seek administration.

10:15

**Willie Coffey:** In trying to deal with that huge issue and problem, is there any way that we, or the UK, could have reached out to the European Commission? Is there any flexibility in the application of state aid rules, even at this last minute in the relationship with the European Union?

**Fiona Hyslop:** I have a couple of points on that. First, even if we were to have done that, the relationship between the UK and EU would not have meant that the EU would suddenly bend rules for one of its members. Secondly, that approach would be inappropriate, and is not practice. The provision of state aid and support is the responsibility of the member state. In this case, dealing with state aid is the responsibility and job of the Scottish Government, as it is for the UK Government and for other Governments in taking decisions. The responsibility for state aid lies with us. As I said, the situation is even tighter for us than it is for the UK Government because, as ministers, we are governed by the Scotland Act 1998 when we make decisions.

In the first place, it would have been inappropriate to contact the Commission and, if anybody thought that we could or should do that,

there was no suggestion that the EU would bend the rules for a constituent part of the UK, when it was about to leave, especially given that the issues of state aid and a level playing field have been absolutely uppermost in the conversation and negotiations between the UK and EU. When I was in Brussels 16 years ago, state aid, a level playing field and fisheries were always seen as the most contentious issues, and they still are. We still do not know the result of those negotiations.

**Willie Coffey:** Looking to the future, should similar circumstances arise again, what role will Scotland have in the post-EU arrangements on state aid? Do we just not know anything about that? Would we have any role, or any influence at all, if a similar scenario were to present in future?

**Fiona Hyslop:** We will continue to be responsible for state aid provision. The problem is that we do not know the rules and regulations on how that will operate—that is the issue. We will be responsible for compliance with a set of rules and regulations that, because we are not a member, we will not even negotiate. We have no idea what the negotiations will deliver. We do not even know whether there will be arrangements. The idea that, all of a sudden in January, there will be no state aid or competition rules whatsoever is misguided.

**The Convener:** We now have questions from Richard Lyle, on areas that he has not already covered.

**Richard Lyle:** There will also have to be some comments. The issue is very frustrating. We played by the rules, and it has cost us. Other countries do not seem to play by the rules; they actually bend them or just ignore them. DF Barnes talked about the need for protectionism through legislation. Why is that not an option for Scotland?

**Fiona Hyslop:** As I have just said, we have responsibility for delivering and administering state aid and complying with the rules in the context of the market in which we operate, which is the EU. Challenges can come in different countries in different ways. That has happened. One example that I am familiar with from another part of my portfolio relates to film. In Spain, the Government funded a film studio with a huge amount of money—hundreds of millions of pounds. That was seen as unchallenged under state aid rules, and it had to forfeit that funding. The costs went to hundreds of millions of pounds, because the approach was not state aid compliant. That is an example of a Government being taken to court or a challenge being made to the EU under anti-competitiveness rules.

Any challenge in respect of anti-competitiveness and state aid is an issue for the responsibilities in this context. As I have said, under the Scotland Act 1998, when Governments and ministers make

decisions, they have a responsibility to comply with international treaties, arrangements and law, of which state aid is one aspect. That means that, instead of waiting for somebody to challenge us at a later date—they may or may not challenge us—we have a responsibility when we take decisions. The UK Government's responsibilities are such that it can be challenged at a later date in court or under the current arrangements with the EU. That is how things have operated to date in practice but, obviously, there are issues to do with how things might work in the future.

Your point about protectionism, or the protectionism that DF Barnes sought, is probably more in line with trying to ensure that there are supply chain elements in any contract that we are leasing. I go back to our discussion at the start of this evidence session. That is why the contract for difference would have helped to protect BiFab; it would have enabled DF Barnes and, indeed, other Scottish supply chain companies, to be part of the contracts that were delivered for the increasing number of offshore renewable sites. There might have been the perception that the Scottish Government had an open cheque book, but it never can have that. That is not a good public finance position to be in.

I think that DF Barnes's indication is as much about protectionism that can be secured elsewhere whereby Governments can dictate X amount of supply chain as part of the contract. That is why the current contract for difference consultation is really important. If we shift the focus to helping to support supply chains, that will give a fighting chance to win on tenders. The quality of the work and the opportunity for the tender are there; we saw that in BiFab's competitiveness compared with that of European yards. There is a problem when there is a global market, cheap labour that can undercut, and a race to the bottom on terms, conditions and price. I am not prepared, and I do not think that we are prepared in Scotland, to cut workers' rights in that regard.

On the EU discussions and negotiations, I recently discussed with the EU commissioner the EU's particular issues around fair work and workers' rights. The UK Government could undercut and drive down wages and conditions in Scotland and the rest of the UK as part of the liberation and freedom that it is seeking in the EU negotiations, but I hope that it does not do that. That would be problematic, and we should resist it. However, that is a danger. We do not know what the situation will be in January, but that would be very dangerous.

I do not think that, in protecting the wages and conditions that we have, we can compete when there is an undercutting of tenders, because the

tenders are all driven by costs and cheaper electricity. That is simply not possible in that situation. We can try and, obviously, some contracts can be secured, but we have to be realistic that the market has to change. The key lever that is in play is the contract for difference.

**Richard Lyle:** Basically, we cannot win any contract if it is always to do with price, so we really need to wake up and do something. Given that almost every European country spends more on state aid than the UK does—France is a particularly good example of that—are you confident that the Scottish and UK Governments are not being unduly cautious in their interpretations of EU state aid rules? Is it perhaps the case that we could simply ignore those rules now?

**Fiona Hyslop:** I disagree with your first point. It is possible to compete; it is just extremely hard. That is my pushback on that.

On your second point, I am a minister who works with other Governments; I am not going to start attacking other Governments. At this point, you might want to reflect on where those Governments stand.

Other countries have different criteria. I would quite like to see the analysis that you have of the percentage of gross domestic product that is spent on state aid, because I suspect that those figures would be calculated in different ways, using different methods by different countries. A country that has state-owned energy companies is in a different position in terms of the percentage of support that is being provided. In those cases, the Government is the only shareholder. Different companies operate in different ways. What I am saying is that I am responsible for what I do as a minister, and I am constrained even further than ministers in other states, because they can be challenged in court after the event, whereas I have to make a decision at the point when a state aid issue arises because of the Scotland Act 1998.

**Alex Rowley:** I would also like to discuss state aid. When Jason Fudge of DF Barnes appeared before the committee, he said:

“Ultimately, the reason that BiFab was not successful in all its pursuits—it was successful in some of them, but it was unsuccessful in the major projects—had nothing to do with the level of investment in the business or in the yards. It had to do with foreign, international, low-cost competition, which was, in many cases, state financed. That is the single largest factor that led to the situation that we currently face with BiFab.”—[*Official Report, Economy, Energy and Fair Work Committee*, 1 December 2020; c 20.]

You can therefore understand that many workers and trade unions feel that there is not a level playing field, as Richard Lyle has said.

At the previous meeting, Jim Smith of SSE said:

“I estimate that there is a difference of at least 10 per cent between prices in Europe and those in the far east.”—[*Official Report, Economy, Energy and Fair Work Committee*, 24 November; c 35.]

We have received some evidence to suggest that the difference is even greater than that. Jim Smith’s point led one of the other witnesses to say that no European country could compete with the middle east. However, in terms of state aid and so on, they are doing so. Hazel Nolan from the GMB said:

“France is a country that, historically, has been overreliant on nuclear and has come to the renewables industry for offshore wind quite late, yet it has made it clear that companies that want to win contracts to produce offshore wind in France need to build in France.”—[*Official Report, Economy, Energy and Fair Work Committee*, 1 December 2020; c 17.]

All that evidence suggests that other European countries are up against the same competition as we are, with regard to the middle east, where there are low wages, and that they are providing state aid and state support. However, a lot of the contracts for Scottish renewables have gone to the middle east. How does that add up?

**Fiona Hyslop:** Quite often, when people think about state aid, they think about the domestic situation in Scotland or, indeed, the European situation. That is, they think about the legislative framework around state aid. However, state aid simply means Governments supporting particular industries. You are right to say that, in places such as China and the UAE, state aid comes in different shapes and guises, and the state provides financial support for companies in order to give them an advantage. That is the context. It is not just about what is happening in the UK or the EU; it is wider than that. It is correct to give that perspective. That all means that there is a price differential, which you have received evidence about.

Companies in France will not be operating under the same contracts for difference rules under which companies in the UK operate. France can do what I think the UK should do with regard to contracts for difference. Obviously, the leases that are being contracted for are being driven by the current contracts for difference rules, which are all about price and how we can source the cheapest electricity. That is the market that the UK has chosen to be in.

10:30

The French take a different position, which puts a premium on French companies getting more in terms of the supply chain. If the UK made its licensing requirements similar to the French ones, it would at least be able to compete on the same basis as the French. However, that would not

preclude, under whatever terms, there being challenges around competing on low wages and—dare I say it?—the terrible working conditions that many workers face in other parts of the world.

**Alex Rowley:** I acknowledge that contracts for difference scheme is a major factor—that UK Government responsibility must be addressed. However, middle east prices are at least 10 per cent lower than European ones—I think that the figure is much higher than 10 per cent. Other European countries can use the same state aid rules on which we lose out to those middle east companies yet they are not breaking state aid rules and we are. However, we are not losing contracts to other European countries. The major contracts that we have lost, such as in the case of BiFab, have gone to middle east companies.

**Fiona Hyslop:** Again, I am happy for the energy officials to add anything to what I am about to say. This is not only about the supply chain and its different elements, but about the developers. Where European developers take out the licences, the relationship between the licence holder and the contractor is about points of influence and what leverage can be used. A number of the developers in the north-east and, indeed, in UK waters are not UK but European companies that might have different leverage in terms of provision. That is about their relationships with their Governments, but they still operate under that licensing regime. An open, competitive, free-for-all race to the bottom is obviously different.

It is also about the advantages of having domestic developers. Should we expect UK-owned development companies in the north-east to provide supply chain support? I think that we should, for a number of reasons. It is in their interests to have a skill base closer to home, which can also drive up the quality of the work and provide certainty for the supply chains. In that respect, we should bear in mind what we have just gone through in the pandemic—the interruption has had consequences, not least in terms of some of the issues that we now face. Resilience in the supply chain will be important for those developers and supporting it is in their interests. However, the issue is the levers that can influence that.

David Stevenson can comment on the ownership of the development companies and whether there are intervention points or leverage that companies' Governments can exert for supporting supply chains. There are obviously different players in the whole market operation and different points of influence, including what happens when the licences are given. It is about leverage and intervention. Obviously, we are far more restricted in Scotland in that regard compared with the rest of the UK because of the reserved and devolved aspects. David Stevenson

can add anything to what I have just said, or correct me if I have misled the committee.

**David Stevenson:** As the cabinet secretary has touched on, it all hinges on the contracts for difference process and how different countries operate the procurement of their electricity.

In the UK, we bid on price and on the price of electricity, as you mentioned. Once a developer has been successful in securing a contract under CFD, they go to the market. The average offshore wind farm costs about £2.5 billion to £3 billion to fund. The developer gets a certain percentage of that back through the contracts for difference scheme; for the rest, they go to the market to source debt equity. The developer would go to the market under an engineering, procurement, construction and installation—EPCI—contract and then companies bid for that work. For example, for the NnG project, EDF went to the market and Saipem won the fabrication contract. It is then for Saipem to go to the world market again—because it has been given a set price by EDF to secure the jacket structures—to ask who can bid to make those jackets at the cheapest possible price. In that situation, BiFab and the other European yards are being competitive with one another, but the procuring company is looking for the cheapest possible price and the middle east and the far east can produce the jackets a lot cheaper.

As the cabinet secretary mentioned, the fundamental principle goes back to the CFD process and how much the companies bid in the auction and how much they secure. The average cost is about £40 per megawatt hour. They then go to the market and tender for that work on the EPCI contractor basis.

As the cabinet secretary also highlighted, there was a consultation on changes to the CFD process in the summer and a more specific live consultation on the supply chain process is due to conclude on 18 January. The UK Government is looking to make changes that will ensure that if developers do not honour the supply chain commitments set out in the plans that they must submit as part of the process, there will be penalties down the line. We need to wait for the conclusion of the consultation process to determine what exactly those penalties are likely to be.

**Alex Rowley:** I want to ask two more questions on that issue. Before doing so, I have a different question. Has the Scottish Government given any other financial guarantees or bonds to EDF for the NnG offshore wind farm contract off the coast of Fife? Have any of those other companies had guarantees from the Scottish Government around bonds and assurance?

**Fiona Hyslop:** I am not quite clear what you are asking. The NnG project is massive. Following discussion and support from several parties, EDF was prepared to persuade Saipem to carve out only eight jackets—it was not all of them by any means, because the project is far bigger than that. In terms of the other jackets that are being produced—

**Alex Rowley:** I am not asking about the jackets, cabinet secretary—I mean the whole contract. Has EDF, which will ultimately run the site, had any financial support or assurances from the Scottish Government?

**Fiona Hyslop:** The officials might want to come in on that. As part of ensuring that we looked at every opportunity, we tried to identify whether we could provide an assurance to EDF and Saipem directly on providing the work. In discussion, there was a suggestion of a managed process by which Saipem could conduct the work on the NnG project in the yard, using the workforce, but not involving BiFab itself. We have explored and continue to explore all those areas.

Saipem is out to market for the jackets and, should someone come in, it would be normal practice for the company to go to the market to provide assurance and bonds. It would be highly unusual for the Government to provide that.

However, I might be answering the wrong question. Unless my officials can add to what I have said, perhaps I could reflect on what you are asking and come back to the committee in writing. It might be helpful if we could indicate the assurances that have been provided historically. Is that what you are asking about?

**Alex Rowley:** Yes. Has the Scottish Government given financial assurances to EDF in the context of the completion of the contract?

**Fiona Hyslop:** I am not aware of that being the case. I am not sure why the Government would do so, and EDF has not sought that because it is contracting with Saipem and others.

**Alex Rowley:** Perhaps we could come back to that at a later date.

**Fiona Hyslop:** Yes. Would my officials like to add anything that I might have missed?

**David Stevenson:** I confirm that, if the question specifically relates to whether EDF or the NnG project has secured any other assurance from the Scottish Government, the answer is no. The only one for which authority has been given, in principle, through the Finance and Constitution Committee, was for the eight BiFab jackets.

**Alex Rowley:** Okay. I will come back to that at a later point.

**Fiona Hyslop:** Yes—please do.

**Alex Rowley:** I will move on. Last week, in its supply chain development statement, Crown Estate Scotland confirmed that developers need not commit to the Scottish supply chain. Therefore in the latest round of licences, which will be granted by the Scottish ministers, any developer that comes in would not have to give any guarantee whatsoever to the Scottish supply chain—it could walk away with a licence and then award the contract to a company in the middle east. Is that not a problem?

You mentioned Brexit. Clearly, one of the sticking points between Brussels and the UK Government is around this whole question. I am aware that the UK Government has signed a trade deal with Japan, which reportedly specifically prevents either side from guaranteeing indefinitely the debts of struggling companies to provide open-ended bail-outs without approved restructuring plans being in place. Given that we do not know what the final deal with the EU will be—or whether there will be no deal at all—or what trade deals might be done, why are we proceeding with those licences when Crown Estate Scotland is also saying that there can be no supply chain guarantee for Scottish workers?

**Fiona Hyslop:** There is a lot in that question. I will first reflect on the trade deals that the UK Government is currently announcing, including that with Japan. Those are effectively rollovers of the EU arrangements, so as far as issues on company bail-outs or state aid are concerned, there is nothing new in them—they are rollovers from the current position on state support.

I will make two points on the ScotWind and Crown Estate Scotland issues. The first is that the ScotWind supply chain statements will be influential in ensuring support for the Scottish supply chain. However, some of the restrictions are similar to those with which the committee will be familiar from planning restrictions on land—for example, a supply chain preference cannot be secured as part of a regular planning condition. That is similar to the position on ScotWind leasing. However, such restrictions can provide for penalties if that has not been done otherwise, and the lease in the contract can also be terminated. Therefore such levers exist, but that is not to say that they cannot be strengthened. Certainly, in the current market conditions, it is important that we consider that aspect.

The idea of halting the ScotWind projects is dangerous, for a number of reasons—the primary one being that we would then not meet our climate change targets if we did not make progress and keep the momentum going on the ScotWind leases. That is imperative for us as a nation if we are serious about meeting the stronger climate change targets—we must remember that it was

not the Government but the Parliament that set them. Meeting our aims for 2030 is a collective responsibility for everybody in the Parliament, because the Parliament pressed for that. We will not meet the targets if we do not press ahead with ScotWind, so doing that is essential.

10:45

We are also dealing with market signalling about the position. The market matters to attracting bids; we must have an attractive renewables energy market. For lots of reasons, Scotland is well placed, but it has disadvantages and challenges, not least of which relate to deep water and operations. There are opportunities elsewhere in the UK, so it is essential to advertise and market the ScotWind leases as an attractive proposition.

ScotWind provides opportunities for the supply chain, and there is an opportunity to strengthen them. On the timescales, we would not have to stop leases to strengthen operations under supply chain development statements and the conditions on that. That is not directly my area, but I have an interest in it—probably for the same reasons as the committee—as I want to ensure that supply chain delivery is strong. If we can improve that, we should strengthen it. The supply chain statements are also accompanied by contracts for difference influences, so we need double support for the two mechanisms to improve our situation.

**Alex Rowley:** My reading of the trade deal that has been done with Japan, if it is a rollover, is that we would not have breached state aid rules if we had continued to support BiFab to restructure and become a financially viable company. That is why the legal opinions should have been published—they are only opinions, and other opinions differ.

Last week, we heard the argument that there would be a risk if we tried to guarantee Scottish workers jobs in our renewables sector. I had always understood that it is accepted that a just transition for jobs is required to meet our climate change targets. However, it is starting to look as if achieving our targets will drive Scotland to be a low-skill, low-wage economy, because we will not have the green jobs to achieve a just transition. Do you see the concerns of trade unions and workers about the agenda that you are pursuing?

**Fiona Hyslop:** We are not pursuing such an agenda; our agenda is to ensure that we have high-skilled, quality jobs. However, you are right to identify the challenges in how we meet climate change targets with a just transition. I reassure you and the committee about my perspective and our influence. The climate change statement is due soon and we have the plan. I talked about the skills base; I am absolutely clear that it is precisely because we want to have high-quality jobs and a

just transition that we deal with operations from end to end.

The work that we have asked the Offshore Wind Energy Council to look at includes elements of how we can improve opportunities for the supply chain and how we can work alongside developers and companies to do that. Professor Jim McDonald is leading important work on that.

Given the £20 billion of opportunities, we must maximise what can be done and delivered in Scotland. The UK system does not have the supply chain statements that we have. However, I urge caution. If the position was so definitive that a percentage was set, there is a danger that companies might not refer in their statements to the maximum that we think that they could secure for jobs.

We are at the early stages of the ScotWind leases, and we have yet to see what the outcome is with regard to what people are committing to and involved in. However, from talking to international companies that are coming to Scotland, I know that they specifically want to develop here and use our supply chain, because we have a quality workforce that might not be available to such an extent in other countries. That factor is absolutely key in making sure that we not only meet our climate change responsibilities, but have a just transition. Climate change targets and the just transition are not only the responsibility of the Government—there is a collective responsibility for them.

With the ScotWind leases, and from my conversations with Crown Estate Scotland and the Minister for Energy, Connectivity and the Islands, I assure you that I want to have a robust system that ensures that we maximise the supply chain opportunities. However, I caution against taking a leap into the unknown of post-January, and thinking that it will be a solution to resolve the issue. Walking away from the market at this stage would be dangerous, and lead to serious consequences and fewer jobs.

**Gordon MacDonald (Edinburgh Pentlands) (SNP):** There is no doubt that the Scottish Government is committed to improving the Scottish supply chain. However, last week, we heard from Simon Hodge of Crown Estate Scotland, who said that

“The level of commitment that developers make to Scottish content will not be a material consideration in the award of contracts.”—[*Official Report, Economy, Energy and Fair Work Committee*, 8 December 2020; c 37.]

He went on to say that there are two key aspects in that regard. One of them is state aid regulations, which we have talked about a lot this morning, and the other is UK competition law. Do

you have any comments on the impact of UK competition law on awarding contracts?

**Fiona Hyslop:** The bottom line is what the competition laws will look like after the negotiations with the EU, which is still a live situation. From my reading of the current negotiations, the issue is not necessarily about what the content will be, but rather who would determine any resolutions. Obviously, for our friends in the Conservative party, particularly at a UK level, the European Court of Justice is politically problematic; therefore, the issue is how we will resolve differences and disputes when there are issues around competitiveness and anti-competitiveness. We do not know what the position will be.

**Gordon MacDonald:** The UK competition law for the internal market has been in place since 1998.

**Fiona Hyslop:** The committee is focused on the issue of the operation of competition law, and what it will look like in the future is also key. Although there is rhetoric around the potential for advantages in terms of more generous provision of state support to companies, we do not know what competition law will look like in any shape or form. Shaping it, even in the UK, is absolutely essential. Mike Russell has been involved in a lot of work in ensuring that that is done on a four-nations basis. I am not sure to what extent this committee has been involved in looking at the development of the common frameworks within the UK, but the whole point of the common frameworks is to maximise opportunities and, at the same time, not disadvantage others.

We think that having common frameworks is the right thing to do, but that the United Kingdom Internal Market Bill is not the right way to pursue them. It is through the common frameworks that preceded the latter work on the internal market that we would operate a system in the UK, which would enable our domestic companies to flourish in lots of different areas, including renewables. That is a challenge, but we cannot put business on pause because the UK has not determined its rules. The outcome of doing so would be dangerous because we are not the only players in town. We have great resources, but there are challenges. There are also different types of energy provision; therefore, Scotland needs more diverse aspects to its approach to energy provision. The announcements on and developments in hydrogen are welcome, but we need to focus on having a just transition for hydrogen that is similar to that for offshore renewables.

**Gordon MacDonald:** You mentioned common frameworks. As you quite rightly say, those are being developed between the devolved nations

and the UK Government. Is there a danger that, in order to enable the functioning of the UK internal market to continue, the 60 per cent supply chain target that the UK Government is talking about will be at the UK level, not at the Scotland level? In other words, we will not be able to specify Scotland-only content in a contract, because UK competition law will specify that that must be done at a UK level.

**Fiona Hyslop:** A great deal of the problem that we have—this applies to a number of areas—is that Scotland's contribution exceeds that of the rest of the UK. I do not want to get into agriculture, but that applies in relation to some of the agricultural payments under the common agricultural policy and so on.

The work with the UK Government on the working party is important in that respect, because it is about growing the opportunities, as opposed to limiting the percentage share, between different parts of the UK. The issue is how we grow the wider market. I think that the target of 60 per cent is what we should be doing. However, that is in the period up to 2030. Therefore, the issue is how we get there, which is why I return to the need for the Scottish Offshore Wind Industry Council, the developers and those in the supply chain to work together.

I think that there should be a bit more collective planning between the developers and those in the supply chain. They should be considering what the maximum is that we can get from energy sources, how they can make the market work more profitably for all of us, and how they can provide the jobs—Alex Rowley mentioned jobs in relation to the just transition—and the energy sources, rather than taking an individualistic competitive free market approach, which has driven the price of electricity to date.

There needs to be a more planned approach. I am not saying that there should be complete state control, but the state can help to bring people together, which I think is a good way of doing it. That would be a sensible way to grow the energy market, meet our climate change obligations and ensure that we have good-quality jobs. Planning in that way would be sensible.

Members should remember that energy is reserved to Westminster. Therefore, we must look at it not just from an energy point of view—to be fair to my colleagues who are responsible for energy, they have been pursuing the CFD issue for some time—but through a supply chain lens. That would be a better way of making sure that the energy market works for the supply chain. Yes, the consumer has been king, and many of us argued for cheap electricity because the bills were too high—I am not necessarily saying that that was the wrong thing to do; it might have been

appropriate at the time—but that approach has had consequences, which have not helped Scottish jobs. That must be changed.

The timing of the committee's inquiry is opportune. Your work will support what the Scottish Government is trying to do to influence the agenda. I am not sure what the timescale is for the publication of your report, or whether I am your final witness, convener, but trying to get something into the process as quickly as possible would be helpful, as would taking a collective approach. The committee's view might be different from the Government's view, but we can share what we are submitting, particularly in relation to CFD. This is the time to reshape the market.

This might not be to the timing that we would have planned for. As the new economy secretary, I spent the first six months in my role dealing with the Covid crisis. However, where I can at the moment, I want—it is part of my responsibilities—to help shape the market so that it is better for jobs and for opportunities in Scotland, and that is what I will attempt to do.

**Gordon MacDonald:** You mentioned contracts for difference providing cheap electricity. Is that really the case? In Scotland, the cost of electricity has gone up 31 per cent since 2010. The EU energy committee does an analysis every two years of 30 European countries and, in relation to who provides the most expensive electricity, the UK is in the top 10.

**Fiona Hyslop:** Again, to use your own analogy, that is on a UK-wide basis. Obviously, that was a policy driver; that is why Government's policies can help drive not only the direct market but also, indirectly, other aspects. Historically, that is where the UK Government has been, but I think that it is changing its position and hearing the ambitions. In particular, the UK energy white paper has now been produced and with the United Nations 26th climate change conference of the parties—COP26—there will obviously be great focus and attention on the UK and how it is behaving and operating in that area, as well as on the drivers in it. Scotland has a lot of experience and expertise, but we have also had to face up to challenges. We can bring that to bear as part of influencing that debate, not only in Scotland but in the UK and globally as well.

11:00

**The Convener:** Are there any final questions from committee members?

**Graham Simpson:** Yes. My question follows on from that, as it is about the energy white paper that the cabinet secretary mentioned. That white paper—which is a very meaty document that I do not expect the cabinet secretary to have read

every word of—speaks of doing a North Sea transition deal with the oil and gas sector in the early part of 2021. There is also an aim of quadrupling the amount of offshore wind power across the UK by 2030. We also, of course, have the joint working group. Does the cabinet secretary see opportunities for Scotland in all that?

**Fiona Hyslop:** Yes. People want to see that deal come to fruition. That was one of the reasons that, very early on, we determined that we would definitely have a green recovery from Covid. I took the advice of the advisory group on economic recovery and, in July, I committed £62 million for the energy transition. That was a down payment to say that we are serious about this and that we think that there are opportunities in that transition. The Acorn project is also getting some investment, and, in relation to the skills area, we can think about how we can give people confidence to change their skills and transition.

This has been long awaited and long expected. I have spoken about it in particular with Nadhim Zahawi, Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy, in discussions at the quadrilateral meetings, as it is absolutely imperative that the UK, with its responsibilities, sees part of the economic recovery being in that area, and the opportunities that are there. As I was saying earlier, instead of necessarily asking what share of the market we get, we are talking about how we grow the market. However, a condition of that has to be a just transition and—going back to Alex Rowley's points—jobs, which are essential.

**The Convener:** I am conscious of time. Richard Lyle has one final question, if the cabinet secretary has time to answer it.

**Fiona Hyslop:** Okay.

**Richard Lyle:** What is the Scottish Government's strategic vision for supporting struggling firms, and what lessons have been learned from BiFab?

**Fiona Hyslop:** The general lesson is that it is right to intervene to support struggling companies, but that there are also issues around that. Although insolvencies are currently below the rate of last year, we know that all the different interventions—particularly the coronavirus business interruption loan scheme and, certainly, the furlough scheme—have helped companies to keep going in terms of survivability. The additional funding that the Scottish Government has provided—most recently about £570 million in the latest round, on top of the £2.3 billion—has also helped companies keep going.

However, I have concerns that we will hit the double whammy of Covid and Brexit and about what that will mean in terms of implications for

companies. Although they might not necessarily be immediate in the first quarter, I think that the second quarter—after April—will be problematic. That is why some of the work and recommendations of the economic advisory group were around what management of equity stakes looks like in relation to both the financial institutions themselves—see, for example, the report from TheCityUK—but also, potentially, Government. However, Government's involvement with private companies does not come with a blank cheque. It is therefore essential that we support strategic companies but that there is a structured way to do that. The banks obviously have a role to play in that as well.

I am hopeful that, thanks to CBILS and other grants, the cash balance of many companies, particularly in areas that are not in difficulty—I am not talking about hospitality, which we know is in a difficult position—means that they might, at this point, be able to weather the period in the short term. That is the intelligence that we have. In relation to our strategic approach, I have just reflected on the ambitions that we have in the green recovery, which can also translate into the digital aspects and other areas.

**The Convener:** I thank the cabinet secretary and her officials for their time this morning.

11:05

*Meeting continued in private until 11:49.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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