OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 4 October 2022

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 4 October 2022

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
26th Meeting 2022, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Fiona Hyslop (Linlithgow) (SNP)

COMMITTEE MEMBERS

*Natalie Don (Renfrewshire North and West) (SNP)
*Jackie Dunbar (Aberdeen Donside) (SNP)
*Liam Kerr (North East Scotland) (Con)
*Monica Lennon (Central Scotland) (Lab)
*Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lloyd Austin (Scottish Environment LINK)
Robbie Calvert (Royal Town Planning Institute)
The Minister for Environment and Land Reform (Màiri McAllan)
David Melhuish (Scottish Property Federation)
Dan Merckel (Scottish Government)
Luigi Pedreschi (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 4 October 2022

[The Convener opened the meeting at 09:33]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning, everyone, and welcome to the 26th meeting in 2022 of the Net Zero, Energy and Transport Committee.

Agenda item 1 is consideration of whether to take agenda items 6, 7 and 8 in private. Item 6 is consideration of evidence that we will hear on the legislative consent memorandum on the Levelling-up and Regeneration Bill; item 7 is consideration of the committee's work programme; and item 8 is consideration of candidates for the post of adviser on climate change. Do members agree to take those items in private?

Members *indicated agreement.*

Levelling-up and Regeneration Bill

09:34

The Convener: Agenda item 2 is an evidence session on the legislative consent memorandum on the United Kingdom Levelling-up and Regeneration Bill. I refer members to the briefing papers from the clerk and the Scottish Parliament information centre.

The bill was introduced to the UK Parliament on 11 May 2022. On 27 July, the Scottish Government lodged a legislative consent memorandum on it, which said that the bill touches on devolved legislative or executive competence in three main areas, including on environmental law through the proposed introduction of environmental outcomes reports. Those will be the focus of our scrutiny.

Today, we will hear the views of three witnesses. I welcome Lloyd Austin, convener of the Scottish Environment LINK governance group; Robbie Calvert, policy, practice and research officer at the Royal Town Planning Institute; and David Melhuish, director of the Scottish Property Federation. Thank you all for accepting our invitation. We are delighted to have you here.

We have around 60 minutes for this evidence session. I remind members that I am a qualified surveyor and that I have a planning interest behind me from when I was in private practice.

Monica Lennon (Central Scotland) (Lab): Will each of the witnesses briefly state what your general views are on the Levelling-up and Regeneration Bill? I will start with Lloyd Austin.

Lloyd Austin (Scottish Environment LINK): I will say three things not about the bill as a whole but about part 5, on environmental outcomes reports.

First, I will make a limited comment about the word "outcome". In environmental law and environmental policy generally, it is good to have outcomes, so having those in the bill is positive. Having said that that is a positive, what the outcomes will be and how they will be determined is very unclear.

Secondly, as an overview, the provisions in general are very vague. There are lots of provisions to allow secretary of state-type regulations about this, that and the other without indicating how they will be done, what they are for, how they will interact with existing regulations and whether they will supersede or replace existing regulations and so on.

There are an awful lot of Henry VIII powers in the bill—in other words, there is a vagueness and lack of clarity with regard to what is intended, how it will be done and who will be involved. Environmental non-governmental organisations would put that in the list of issues of concern about the UK Government's approach to the environment. Notwithstanding the high-level rhetorical commitment to the environment, when we look at some of the detail, we see that what will happen is unclear. In the context of other measures, such as the Retained EU Law (Revocation and Reform) Bill, for instance—

Monica Lennon: Forgive me, but I am going to interrupt you. I have probably not had enough coffee this morning: when asking my question, I meant to ask about your views in the context of how the Levelling-up and Regeneration Bill interacts with devolved policy. That gives the rest of the witnesses a heads-up. Will you drill down into that briefly?

Lloyd Austin: My third point was going to be about that.

Monica Lennon: I thought that you were getting there.

Lloyd Austin: My third point relates to devolution. It has to be said that a lot of the bill relates to England only. There is reference to some reserved matters, which, obviously, apply UK-wide, including to Scotland. Part 5 extends to Scotland—it needs to, as it covers reserved matters. However, it is a bit unclear when it comes to devolution in so far as it specifically allows environmental outcomes reports for devolved areas—in fact, clause 121 says that the UK secretary of state may make regulations in relation to devolved environmental law, subject to consultation with the Scottish ministers—but the specific references to environmental assessment regulations, for example, do not list the devolved ones. There is a lack of clarity on what is meant and whether it should or should not apply to devolved matters.

Finally, we think that, if environmental law is devolved, the secondary provisions that might be set up should be subject to the consent of the Scottish ministers and the Scottish Parliament in the same way as primary legislation is.

The committee's consideration of this legislative consent memorandum is an example of it scrutinising a piece of primary legislation, so should the same provisions not apply to regulations made under this legislation, if they apply to devolved laws? We therefore argue that clause 121 should be amended to require the consent of the Scottish Parliament.

Monica Lennon: Thank you. I saw Robbie Calvert nodding part way through that response. I am keen to hear what you think, Robbie.

Robbie Calvert (Royal Town Planning Institute): I am completely in agreement with Lloyd Austin regarding clause 121, and we also support amendments 178, 179 and 180 to that clause, which were tabled during bill readings. Those necessitate consent from devolved nations.

Even if changes are made solely to English law, we still need to consider cross-boundary special areas of conservation and special protection areas—for example, the River Tweed, the Solway Firth and the Berwickshire and Northumberland coasts. We want to see how those cross-boundary issues will be taken into consideration if there are deviating systems of environmental law.

At the moment, there is a lot of confusion and many unknowns. We expect a consultation on EORs, and I hope that that will be the beginning of an on-going dialogue. I imagine that we will be called to give evidence again when that is published.

We would like to see the changes to the environmental impact assessments and strategic environmental assessments processes to be evidenced; we also want to hear about that during the consultation. I know that there is a lot of intention to streamline processes, and we also support a move to more outcome-focused processes, but that could lead to a lot of uncertainty and complexity. It could also lead to significant delays and significant resourcing impacts on consenting bodies.

Monica Lennon: What do you think, David Melhuish? Please bear in mind that I want to hear about the impact of the bill on devolved policy

David Melhuish (Scottish Property Federation): In many ways, the initial view of our members is one of uncertainty. They have discussed the bill with us, and part 5, which is the topic of today's meeting, was the key issue that they raised.

Environmental impact assessments have been a fundamental part of the development process over a number of years. Whatever views people might have on the UK's exit from the European Union, we knew that meant that there would be a replacement framework and that that would have to be addressed as an iterative process at some stage. However, at the moment, there is not enough detail on EORs to know what is meant.

In principle—Lloyd Austin mentioned this—the idea of focusing on outcomes is enticing, but we really need to see what that means in practice in terms of the detailed legislative proposals before commenting further. We are focusing on Scotland,

but the rest of the regime is very much looking at competent authorities that—in one way or another—find their legal framework and direction through the Scottish Parliament, so there is probably concern about the potential for duplication or confusion between the regulatory regimes.

That is our initial view. Unfortunately, there might very well be more questions than answers in the submission that we make later this month. That is because of where we find ourselves in the process at this stage.

Monica Lennon: Okay. I have heard that there is a lot of uncertainty. I would like to go back round the panel and ask witnesses for a yes or no answer to my next question, if possible. Do the powers for the secretary of state that are proposed in part 5 of the bill respect the devolution settlement?

David Melhuish: Potentially, they might not. That is about as far as we can go at the moment. As we have heard, there are powers that could potentially overwrite previous stances of the Scottish Parliament, so we can conclude only that there is potential for some conflict in the regulatory regime between the UK and Scottish Parliaments. We hope that that will not be the case. It is an important matter, and we would have liked to see more of an understanding between the UK Administrations before we got to this point.

09:45

Robbie Calvert: We support extra safeguarding in consent arrangements between the nations, which is covered by amendments 178, 179 and 180 to clause 121.

We also have a question about environmental common frameworks, such as the one on air quality, which I know the committee consulted on in June. We responded to that. I do not know how those frameworks would interface with the proposals in the bill. There is a big question mark over that.

Monica Lennon: Lloyd Austin, we already have a written submission from Scottish Environment LINK identifying specific concerns with the bill with regard to the Sewel convention and the possibility of the UK Parliament altering Scottish environmental laws. Do you want to expand on that?

Lloyd Austin: I agree with David Melhuish. The bill as drafted potentially does not respect the current devolution settlement in seeking the consent of this Parliament in relation to devolved legislation.

Monica Lennon: Thank you. I think the deputy convener has some questions.

The Convener: We move to questions from Jackie Dunbar next; we will come to the deputy convener later.

Jackie Dunbar (Aberdeen Donside) (SNP): What are your views on the current system of environmental assessment in the UK? Is there a need to simplify the system, following exit from the EU? I will start with David Melhuish and work my way round the witnesses.

David Melhuish: That is a hugely complicated technical area. Major modern developments are very complicated. I spoke to SPF members in the process of gathering evidence for the committee. For most developments, EIAs cost between £80,000 and £120,000—and that is just the start, because of the complexity of the framework.

We understand that the need for simplification lies behind some of the levelling-up intentions. That is enticing, but it is our suspicion that regulation tends to get more complex and demanding. To a degree, we are better with the devil we know, and we do know the devil of the Scottish system at this stage. Colleagues elsewhere in my organisation would have to speak about other regimes. Robbie Calvert will have a view on that.

The message that I want to underline to the committee is that hundreds of major planning applications are determined every year, most of which require EIAs and related assessments. That industry is worth tens of million pounds a year. The impact of the policy changes that you are considering cannot be underestimated.

Robbie Calvert: We always welcome improvements to existing processes. In the first instance, that would be by providing the correct resource to consenting bodies. I am sure that the committee has been well rehearsed on our statistics about that matter: there have been 42 per cent cuts to planning departments since 2009 and a one third reduction in staffing. Effectively resourcing the consenting bodies would certainly improve the process.

We also think that digitisation and the use of digital EIAs bring clear opportunities. I hope that the committee has seen our written evidence. I have referenced a 2020 report from the Institute for Environmental Management and Assessment, which suggested a number of potential improvements to existing processes. There are also opportunities in the Scottish Government's digital planning strategy to develop shared cloud-based resources for planning and place data, and to establish a foundation of robust and trusted data. There are good examples of that already happening—for example, in the Crown Estate offshore wind evidence and change programme.

There are a number of improvements that we could make to current processes.

It is useful to consider how many projects EIAs apply to. IEMA has done some work on that in England. I think that 99.9 per cent of projects did not need an EIA. It is larger and more significant projects that do.

It would be a concern if changes were to come down the line in 2023-24, because that is quite a short period, given the timeframes that a lot of the larger and more significant infrastructure projects work to. Change could cause uncertainty and potentially delay.

Jackie Dunbar: So, simplifying is not always the best approach.

Robbie Calvert: No, it is not.

Lloyd Austin: I reiterate Robbie Calvert's point about the number of applications that require an EIA compared with those that do not need one at all. The threshold for needing an EIA has a potentially significant effect on the environment. If you are going to reduce the number of applications that will be assessed, you will, in effect, be taking decisions about things that could have a significant impact on the environment without considering them.

That does not mean that we are opposed in principle to improved implementation or simplification. It is often the case that, when such issues are looked at, it is not the original law or the original process that is an issue; it is often a question of streamlining the implementation, the administration and the processes. Robbie Calvert talked about digitalisation. Doing such things could make the system work better for everybody.

In general, I take the view that the EIA system is very well known by all parties—by Government, agencies, developers, communities and non-governmental organisations—and I would expect those who have proposed significant change to provide some evidence on what is wrong with the existing system. I have not seen that evidence and it has not been included in the explanatory notes for the bill, for example. In principle, I have no objection to the idea of doing things in a better way. However, to get to a better way of doing things, the arguments need to be well evidenced and there needs to be a clear proposal of what will be done instead—which there is not.

Jackie Dunbar: My next question was going to be about whether the current regime is working, but I think that the witnesses have already answered that for me, so I will not ask it.

The Convener: Thank you for that, Jackie.

Mark Ruskell (Mid Scotland and Fife) (Green): The witnesses have already touched on some areas that I want to ask about. I want to get a bit more information from them about part 5 of the bill, and particularly the clauses that set out how the new system will work. Some aspects of that have already been covered, but I would like to go round the witnesses and get their views on the specifics of what is currently laid out and how it will work.

Lloyd Austin: One of the challenges is that it is all about making provision for the secretary of state to make regulations, but we have not seen even a draft of those regulations or a policy explanation of how they will work, so that is very difficult to determine. However, I will draw attention to one thing. The explanatory notes and the UK Government in debates on the bill at Westminster often refer to clause 120(1), which is called a non-regression clause. It says that the environmental protection should not be

"less than that provided by environmental law at the time this Act is passed."

My view is that that is a rather poor non-regression clause in so far as it is a rhetorical statement of good intent but it does not have very much meat to it. The full phrasing is:

"The Secretary of State may make EOR regulations only if satisfied that making the regulations will not result in environmental law providing an overall level of environmental protection that is less than that provided by environmental law at the time this Act is passed."

The test is the secretary of state's satisfaction. In my view, a meaningful non-regression clause has to involve an objective measure of that non-regression or be based on independent and objective advice from environmental agencies such as Natural England, NatureScot, the Scottish Environment Protection Agency and the Climate Change Committee instead of being based simply on the secretary of state's satisfaction. If the secretary of state is making regulations, it is almost inevitable that he or she will say that they are satisfied.

Mark Ruskell: Does that relate to international obligations? Are those baked into that provision or, again, is that part of being satisfied?

Lloyd Austin: International obligations are part of the next sub-clause, which says that EOR regulations

"may not contain provision that is inconsistent with the implementation of the international obligations of the United Kingdom relating to the assessment of the environmental impact".

That relates to a specific set of international obligations; it does not relate to wider environmental international obligations. For instance, the Aarhus convention would not necessarily fit under that definition of an obligation.

The clauses that set out how the new system will work could be both broadened and made more objective in terms of their impact.

Mark Ruskell: Do you to have any other points to raise on the detail? You mentioned a sense of vagueness.

Lloyd Austin: I will stick to that.

Robbie Calvert: I would just like to extend the discussion about international obligations. It was confirmed at one of the bill committee hearings, on 8 September, that the UK Government would still meet its obligations under the Aarhus and Espoo conventions. We support that, and we encourage the committee to continually press for that approach.

However, we do not have a lot of detail. We understand that the proposed reforms will affect 18 different consenting regimes—one of which is planning, which itself interacts with other consenting regimes and their respective EIAs. As is set out in the legislative consent memorandum from the Scottish Government, a lot of detail is still needed on, for example, the proposed contents of the EORs, how and to what extent they are to be taken into consideration by public authorities in decision making, and what plans and consents are to be subject to procedures. There is a lack of clarity about the environmental common frameworks, as I have pointed out, and about whether different countries could have different outcomes.

That is why we have asked for the proposals to be mapped out across other proposals that are going on—not least, planning reform. For example, different approaches to biodiversity net gain have been taken in England and Scotland. How would that be taken into consideration, given that biodiversity enhancement is a potential outcome of EORs? We need to consider that thoroughly.

I will leave it there for now.

Mark Ruskell: Is there clarity over which plans and programmes might be captured?

Robbie Calvert: We do not have that at this stage. I expect that to come out with the consultation.

David Melhuish: As I said earlier, the problem is that, underneath the top-level principles, the detail is not there for us to get to grips with.

Certainly, our understanding and assumption had been that the intention was not to go backwards on standards and the level of regulation. However, I must admit that, having listened to Lloyd Austin, I will again ask our members how satisfied they are with that level. Again, that just underlines the uncertainty.

Obviously, we represent mostly private sector developers and companies, but the regime is such that it is also a huge issue for the public sector as it takes forward infrastructure projects and so on. That doubles down on the uncertainty around where we are at the moment.

10:00

Lloyd Austin: I refer you to one particular clause that underlines the vagueness. Clause 117(7)(h) says that EOR regulations may include provision about or in connection with

> "how, and to what extent, environmental outcome reports are to be taken into account or given effect by public authorities in considering, and making decisions in relation to, relevant consents or relevant plans".

That does not say how the reports will be taken into account; it says that some future regulations will set that out. To take a cynical in extremis position, if the bill is passed, the secretary of state could make provisions that say that environmental outcome reports do not need to be taken into account when making a decision. I am not suggesting that that will be the case, but what is the point of a bill that allows for regulations that provide the possibility of the opposite effect from what you are trying to achieve? Because the bill is so open and every possibility is available, we cannot determine from it what will happen.

Mark Ruskell: Environmental assessment is a well-established practice and relates to the habitats directive. There are a set of tests, including a public interest test, that apply. Again, we are speculating as to what may or may not happen, but do you see that practice of appropriate assessment and the application of key tests continuing? Alternatively, if we look at other bills that are being introduced, can we see a potential change in relation to habitats as well, which would seriously impact on assessment?

Lloyd Austin: A couple of years ago, the habitats directive was subject to a very thorough appraisal that was called the refit process, which was led by the European Commission, at the instigation of the then UK Government. It was a good process, and it concluded that the directive was fit for purpose and that there were challenges in implementation that needed to be resolved, and the remaining EU member states are now engaged in that.

In the bill, clause 127 deals with interaction with existing environmental assessment legislation and the habitats regulations. Once again, that is incredibly open and vague. It simply says that any option is on the table in relation to what the regulations may say. They can include provision for amending and disapplying the existing

regulations and so on. What will actually happen with the regulations is unknown.

I underline the vagueness and point out that the existing tests are all clear, particularly article 6 of the habitats directive, which deals with significant impact, as well as the tests in relation to ensuring protection of protected sites, and equally the tests of where protection can be overridden in cases of overriding public interest. There is lots of good case law in relation to that. How and whether that will be changed as a result of the bill are not defined in the bill or the explanatory notes.

David Melhuish: From our members' perspective, the industry is now very much driven by institutional investors and other types of investors with demanding requirements on environmental and social governance and related criteria. It is helpful to have good and clear regulation that gives our members a good framework with which to make their proposals in the knowledge that they will be compliant and well received not just by the authorities but by communities. That is what they want to do. It is not just the right thing to do; it is actually in their interests to do it, for the reasons that I have spelled out.

The authorities are not pushing against a negative industry that is resistant to good legislation. There is an opportunity to ensure that we agree a way forward with the authorities, whether that is with the UK Government or the devolved Administrations. However, the industry is very worried about potential schisms in the regulations if they are not as well synchronised as they could be in relation to the Scottish Parliament and other areas.

Robbie Calvert: There are elements of the process that we could do better. One to focus on is better public engagement. EIAs and SEAs are as much about assessing potential impacts as they are about transparency and accountability. That goes back to my comment about potential digital innovations. We are certainly looking for improvement in that area in the new system.

We also advocate the retention of consideration of alternatives, which is part of the existing process. However, in our submission on the Levelling-up and Regeneration Bill, we asked for the expansion of assessment in relation to population health. Such assessment would have to be aligned with health impact assessments. That has come through in the Planning (Scotland) Act 2019.

Mark Ruskell: Is that also coming through the EU refit process? Is the EU responding to the need for reform relating to transparency in wider public health?

Robbie Calvert: I assume that it is, to some extent, but I cannot give any detail on that.

Liam Kerr (North East Scotland) (Con): Good morning. Lloyd Austin, you began your answer to Monica Lennon by briefly mentioning EU legislation. The Scottish Government took a decision to keep pace with EU law. What impact would the bill's provisions have on that decision? If it turned out that the provisions enhanced and improved protections, would it be right—as I assume that it would be—for the Scottish Government to use those protections rather than to dogmatically follow the EU's position?

Lloyd Austin: That is a hypothetical question, but, if those circumstances arose, I think that it would.

Liam Kerr: Thank you. Robbie Calvert, Lloyd Austin talked about clause 120 and suggested, I think, that it could be amended to make it better. In your view, clause 120 sets out safeguards that will ensure that the UK continues to meet its international obligations and includes provisions on non-regression, which are also in the UK-EU trade and co-operation agreement. Does clause 120 provide sufficient safeguards against the weakening of existing environmental protections?

Robbie Calvert: We did not pick up on that issue in our written evidence. However, from what I can gather from what Lloyd Austin has said, I would be a bit wary of, and concerned about, supporting clause 120 in its current form.

David Melhuish: As was said earlier, we understand that the intention is not to regress or drop below our obligations. That is welcome and what is mostly expected, so we would like that to be spelled out in agreement with the UK Government and the devolved Administrations, which would complement what the UK has agreed with the EU and elsewhere. That is our answer on that front.

Liam Kerr: Lloyd Austin, I will go back to the first question that I asked you. You answered the second part of the question by saying that it was a hypothetical question. However, the first part of the question was about the impact that the provisions will have on the Scottish Government's decision to keep pace with EU law. I do not think that that is a hypothetical question.

Lloyd Austin: It would depend on the nature of any regulations under these provisions, which we do not have, because the bill provides the power for the secretary of state to make regulations, but those regulations have not been seen. Not even a detailed policy proposal has been seen, because—as Robbie Calvert mentioned—the consultation is still to come.

Although your question was phrased in a way that meant that it was not hypothetical, it described a hypothetical scenario, in a sense, because of the absence of the sight of the regulations or the policy behind them. However, hypothetically, if regulations had any impact on Scottish law in a devolved area that had implemented, passed or retained—whatever you call it—EU law and the regulations made a change that regressed that in some way, it would be contrary to the Scottish Government's policy position of keeping pace. The keeping pace provision in the European Union (Continuity) (Scotland) Act 2021 is discretionary, and it is for ministers to choose to use it, or otherwise, if they wish. They can also keep pace using existing provisions in environmental law and not only do so through the continuity act.

If regulations had an impact on that, it could create a position in which the UK Government legislated in a devolved area in contradiction to the Scottish Government's desire, so there would be a sort of clause 121 situation, which is about consultation. If agreement were reached, it would be fine, but, if there was contradiction, the two Governments could end up submitting contradictory legislation to their respective Parliaments.

Our preference would be for a provision that ensures that, if matters are devolved, the consent of the Scottish Parliament should be required, and, therefore, agreement should be reached to achieve that consent.

Natalie Don (Renfrewshire North and West) (SNP): Good morning, everyone. We have touched on this topic, but I would like some further explanation. How might the proposed system of EORs affect public and stakeholder participation in decision making on new developments? I put that question to Lloyd Austin first.

Lloyd Austin: The answer to the question depends on what the content of the regulations that flow from the bill's provisions. I am seeking to recall whether the bill says anything about regulations having to include provision for public engagement, consultation and so on. I think that it does at some point, but the answer has to be that it depends on what is in the regulations that follow.

Natalie Don: So, we come back to uncertainty.

Lloyd Austin: Yes, we come back to uncertainty and a lack of clarity.

Natalie Don: Okay. I do not know whether you will both give the same answer to that question, but I will ask Robbie Calvert, too.

Robbie Calvert: We do not have clarity on that at the moment. It is certainly an area where we could improve. Do we need a new set of regulations to improve on that area? I am not sure about that. As I said, some of the digital engagement tools could be used to enhance community engagement. In our response to the Levelling-up and Regeneration Bill, we set out that we want to see that part of the system enhanced.

Natalie Don: David, do you have anything to add?

David Melhuish: I will just complement what has already been suggested.

As Robbie Calvert just alluded, there are workstreams to improve digitalisation in the wider regime, and the experience of our members is that there was much more online public engagement during the past two years. There was a noticeable increase in participation. Those areas can be improved, but, given that not everyone will be conversant with online engagement, in-person events are still very much part of the system.

I support what Lloyd Austin and Robbie Calvert said.

Natalie Don: Thank you. I have no further questions, convener.

The Convener: Now it is the deputy convener's turn.

10:15

Fiona Hyslop (Linlithgow) (SNP): Good morning. I am interested in policy coherence. Environmental and planning legislation is devolved. I will come to Robbie Calvert first. How might part 5 of the bill impact on the fourth national planning framework?

Robbie Calvert: As I mentioned, we want the proposals in the bill to be mapped out against the existing proposals, including those on planning reform. I mentioned the fact that different policy approaches have been taken on biodiversity net gain, on which there is a policy in the draft NPF4. We have a wider concern about NPF4 putting additional duties on decision makers. As well as having a resource implication, that will create an issue with skills, because planners will have to deal with huge number of additional issues.

We are concerned that any reform in this area could cause a significant problem for a planning system that is already in flux. We are struggling when it comes to resources—not just financial resources but personnel. We are working with the Scottish Government to push forward with an apprenticeship scheme to deal with that. Given that there is a huge issue around skills, is this a good time for the planning system to implement a whole new set of reforms on environmental impact assessment and strategic environmental assessment? From our perspective, there is a big question mark over that.

Fiona Hyslop: David, what are your views on the interaction between the bill, the LCM on which we are looking at, and the draft NPF4?

David Melhuish: To add to what Robbie Calvert said, NPF4 will incorporate Scottish planning policy, which details the development management systems. We hope that what is proposed under the bill will not conflict in detail with the principles and requirements of EIAs as we know them and assessments, but we do not know whether that will be the case, because we have not seen the detail.

That is a concern, as is the timing. We are expecting NPF4 to come back imminently. Along with other stakeholders, we had wider concerns about the delivery and detail of some of the original propositions in NPF4. The timing is a particular concern, as is the potential conflict regarding the underlying principles.

Fiona Hyslop: I turn to Lloyd Austin. We know that, whether we are talking about UK Government or Scottish Government bills, there will be a lack of detail until regulations are granted. However, concerns have been expressed by English NGOs about what might happen. We have a new Government at the UK level, one of the first announcements of which was that, as of Monday, businesses with fewer than 500 employees will be exempt from reporting requirements and other regulations. It also said:

"The changed threshold will apply ... to all new regulations under development as well as those under current and future review, including retained EU laws."

The UK Government is saying that there will be non-regression as far as environmental law is concerned. If the UK Government were to clarify that non-regression will apply in this context, that would give an early indication that non-regression will stand. Do you share that view?

Lloyd Austin: Yes. An issue that I got into in answering Monica Lennon's question—I apologise for doing so prematurely—was the fact that the context in which these provisions are being considered includes the Retained EU Law (Revocation and Reform) Bill, as well as the new proposals that have come out in the past week or so.

Many of those proposals suggest weakening of environmental law of one type or another. Indeed, NGOs in England have started a campaign about "the attack on nature", as it is put. That is a serious concern because, if you were to exempt any business with fewer than 500 employees from all environmental regulations, which is a potential interpretation of the phrase, it would mean most businesses. It would certainly mean most farmers and landowners. It causes some degree of concern as to what the point of environmental legislation is if you exempt 99 per cent of the people who have a potential impact on the environment one way or another.

There is a serious concern, and the one clause in part 5 of the bill that calls itself a non-regression clause is weak. There are ways in which it could be improved. However, the other provisions—whether the Retained EU Law (Revocation and Reform) Bill or other policy ideas that have been floating around in the past week or so—are in other bits of legislation but, in some ways, appear to be inconsistent even with the intent of the non-regression clause in the Levelling-up and Regeneration Bill.

Fiona Hyslop: Early clarification by the UK Government of what it announced on Monday would at least give us some certainty about what might or might not happen.

Lloyd Austin: Yes.

Fiona Hyslop: I am trying to understand the matter from a practical point of view. What will it mean for projects, in particular? I turn to Robbie Calvert for an answer next. Although there are some concerns about the provisions on environmental outcomes reports, you can see a sense in them from a policy point of view. However, who would make the decision on large onshore—or even, potentially, offshore—developments that environmental assessment has shown need some kind of mitigation when that mitigation might not be able to happen on a granular, small scale but will happen elsewhere? Under the bill, would a Scottish minister or the secretary of state decide where the mitigation for the environmental outcome would take place? That is a practical situation that could happen.

Robbie Calvert: I am not entirely sure. Lloyd Austin might be better placed to answer that at this stage. I am not sure that we quite have the detail at the moment.

Lloyd Austin: My understanding is that your question is: who would be responsible for taking a decision about mitigation? I think that the answer is: whoever was responsible for the consenting of the project. If it was a devolved matter, it would be the Scottish ministers, and, if it was a reserved matter, it would be the relevant secretary of state.

Fiona Hyslop: Clearly, in some areas—perhaps more for offshore projects, because planning is devolved, although energy policy is reserved—we might want to pursue clarification on who would decide where the mitigations would be because the consenting should be devolved.

Lloyd Austin: Indeed. Offshore mitigation and compensation plans need to be agreed strategically because the responsibility for the mitigation and compensation could fall with the

other jurisdiction but, equally, it might be delivered in a different geographic jurisdiction. For instance, you could imagine that the developer of an offshore wind farm off Northumberland agrees through the EIA process that there is a requirement for compensation and, because birds, whales, dolphins and other wildlife move across borders all the time, comes to an agreement with the Crown Estate and landowners to deliver that compensation in the Firth of Forth, which would be a Scottish jurisdiction.

There needs to be join-up between the two Administrations. That is one of the reasons why I would always fall back on the need for there to be agreement.

Fiona Hyslop: So, that comes back to consent rather than consultation.

David Melhuish, you talked about the importance of enabling infrastructure investments and developments. I am also interested in whether, if the environmental outcome report is in the jurisdiction of the secretary of state, with a duty only to consult with the devolved Administration, that will enable or hinder developments. We actually want to make things happen, but there is a question of the speed of decision making, and the issue is whether those decisions are better made more locally. However, land-based decisions would quite clearly be more devolved, unless they involved a big energy project such as a nuclear facility, for example.

David Melhuish: Again, that is why we need to know who will make the decisions and the process by which the decision makers are allowed to come to the decision, because there is potential for a lot of delay in the system. At the moment, we do not know that in any detail.

We are not arguing that the current regime is flawless. There are several competent authorities for different aspects of the environmental assessment system, and there are situations in which decisions are prolonged over periods of time to the extent that the process for even relatively smallish major developments can take years and years and the developments might not materialise simply because of a lack of decision making on the part of the various competent authorities. I can think of instances in which hundreds of affordable houses have not been delivered because of that stand-off between various competent authorities. As I said, we are not arguing that the current system is flawless, but at least we know what it is.

The Convener: I have a couple of questions to finish off this session.

EU environmental regulation is interesting because it ends up pickling things in aspic and not allowing things to change. We tend to feed into the process, and the approach tends to follow a precautionary principle that says that no damage can be done. Although that might be the right approach, there might also be benefits from the proposed development. I have heard Lloyd Austin's comments on that, but I am interested in Robbie Calvert's and David Melhuish's views. Do you think that the EU's precautionary approach to the environment gives enough flexibility?

Robbie Calvert: We support the precautionary principle. My answer touches on the issue that Fiona Hyslop raised, too. There is no evidence that EIAs are the part of the process that delays developments—I refer you to my written evidence. IEMA produced a report on the matter, called "Levelling up EIA to Build Back Better", which sets out a number of reasons for delays in projects. We have not seen any conclusive evidence to suggest that EIAs are what is holding up large infrastructure projects. A lot of the issues involve things that I touched on earlier, such as resourcing of not only planning departments but statutory consultees.

The Convener: I am not saying that they are holding things up; I am asking whether they are preventing developments that might have benefits across the whole environment rather than just in the area that was designated or that falls within the designation for a species of flora or fauna.

Robbie Calvert: I think that it changes from project to project. These decisions are not easy to make—they are tricky and are not black and white. That is why we have these processes in place. Yes, there is a desire to simplify them, but we can do that only to a certain degree, because the decision-making processes that we are dealing with are inherently complex.

David Melhuish: I suppose that our answer would be "sometimes", which is not very helpful. Because of the precautionary principle, concerns about species have delayed developments, but, several months down the line, those concerns have been found not to be material considerations in terms of the development. So, EIAs can sometimes cause delays.

There can be a tendency towards caution. In many ways, that is understandable, because someone might see that there might be a legal issue somewhere down the line as the result of a decision by a competent authority.

I can answer your question only by saying that the precautionary principle sometimes does bring about the situation that you suggest.

10:30

Lloyd Austin: For context, I note that the precautionary principle is one of four so-called EU

environmental principles that were embedded in the Treaty of Lisbon before we left. All four principles are now incorporated in domestic law. In Scotland, they are incorporated through the continuity act. The UK Government has carried them over into domestic law for England and for reserved matters as well in the Environment Act 2021, which also applies to devolved matters in Northern Ireland—the gap is Wales, which needs devolved legislation on EU principles. Whether the precautionary principle is overzealously applied is a matter of judgment. However, as Robbie Calvert says, the situation will change from case to case, but the principle is a good principle, and it is good that all the respective Governments have put it into domestic law, in the absence of EU law, now that we have left the EU.

The issues that you raise about potential problems are about the implementation and interpretation of the principle. Both Governments have consulted on guidance around its interpretation and application. Neither Government has yet finalised and published that guidance, but that would be the place to address your concerns.

The Convener: I do not necessarily have concerns; I may be delighted that the precautionary principle is there, because it overrides a lot of decisions relating to environmental law. I would argue that it is actually a good thing and the fact that it is in UK and Scottish legislation strengthens the position.

I have picked up on three areas. You feel that the word “consult” in clause 121 is not sufficiently strong; you are concerned that there are regulations that you have not seen that could be worse but are not definitely worse; and you are worried that the regression clause—clause 120—is not strong enough. If there were more detail on those areas, would that address your concerns? You could give a yes or no answer, but I suspect that you will not.

Lloyd Austin: Whether we answered yes or no would depend on whether the proposals to address the concerns actually did so. It is a kind of hypothetical question.

It is possible that, when all the regulations and the guidance that goes with them are published, the proposal will turn out to be perfectly benign. However, we have not seen those things. That is why it is difficult to make a judgment. We do not necessarily think that the proposal is bad; it is just too vague for us to be clear about.

Robbie Calvert: I think that you capture some of our issues. I agree with Lloyd Austin that we would need to see more detail to enable us to see whether any issues might arise.

David Melhuish: I would just add an issue about how the legislation relates to the existing policy-making and regulatory regimes. That is critically important for people who are embarking on major and complex developments.

The Convener: Thank you for taking time to come to the committee—I understand that some of you had to find the time at quite short notice. I appreciate your attendance.

10:33

Meeting suspended.

10:39

On resuming—

Subordinate Legislation

Biocidal Products (Health and Safety) (Amendment) Regulations 2022

The Convener: Our third item of business is evidence on a consent notification on the Biocidal Products (Health and Safety) (Amendment) Regulations 2022, which is a forthcoming United Kingdom statutory instrument on which Scottish Government consent to legislate is sought. The Scottish Parliament has a role, subject to a protocol, in the scrutiny of Scottish Government consent to UK secondary legislation in devolved areas arising from European Union exit.

There is a short reporting deadline on this notification, so today we will hear from the Scottish Government on its proposal to consent. We are joined by Màiri McAllan, who is the Minister for Environment and Land Reform, and the Scottish Government officials Dan Merckel, chemicals team leader, and Luigi Pedreschi, solicitor.

We have around 25 minutes for this item. Minister, I believe that you would like to make an opening statement and that you have a slight correction to make regarding the notification.

The Minister for Environment and Land Reform (Màiri McAllan): Thank you for the opportunity to make some opening remarks on the substance of the statutory instrument. I hope that they will be helpful, because the regulations are complicated. I will then address the error.

The SI relates to the control process by which biocidal products, which are mainly used to control pests or bacteria, or to protect people, animals, materials or articles from pests and bacteria, are considered for access to the Great Britain market. The overall purpose of the SI is to put in place temporary measures to allow the Health and Safety Executive to process the large number of applications that were received under the transitional arrangements following EU exit.

The GB regime—as I will refer to it—ensures that any products that are placed on the GB market are safe to use and efficacious. Suppliers or manufacturers of biocidal products have to apply for authorisation from the HSE to be able to sell or use their products, and must do so within specific timeframes. With the transitional arrangements under the GB regime, the HSE has received a very large influx of applications, which it cannot deal with within the legal deadlines as they stand. The SI purports to extend the deadlines for certain applications.

The authorisation procedure in the GB regime depends on the type of application that is being made. The changes made by the SI will affect the legal deadlines across various applications.

The Health and Safety Executive is confident that amending the regulations in the way that is proposed will allow it to process the applications that it has received within the extended deadlines. Applications will be processed on a rolling basis. Work has started already, and it is expected that the majority will have been processed before 31 December 2027—the new deadline.

The Scottish ministers consider that the situation should have been foreseeable. The events that have made the SI necessary were not of our choosing. However, given the situation at hand, we think that not agreeing to the extension, and thereby hindering the operability of the new GB regime, would pose a greater risk to the environment, public health, businesses, consumers and the economy than allowing the temporary extension. If consent were not granted, the practical implication would be that, as current evaluation deadlines pass, legally, large numbers of biocidal products would need to be phased off the GB market.

Thank you for giving me the time to set that out. I will now briefly address the error in the notification and the notification summary that we submitted to the committee on 23 September. The notification does not accurately describe one of the proposed legislative changes—it is a minor change compared with the overall effect of the SI.

I will explain it for the record, but this is very complicated, so please bear with me. The original notification stated that the SI introduced into the GB regime

“a new transitional provision”

that would

“allow applications to change or modify an authorisation made under the EU”

regime before the implementation day and that that would be transferred to the GB regime

“provided the application and relevant information have been resubmitted.”

However, the notification should have said that the new transitional provision will allow applications made to the HSE before implementation day, specifically under regulation 414/2013, which are subject to the simplified authorisation procedure, and for biocidal products that are identical to another product that is already authorised or under assessment, and that those should be resubmitted and considered for authorisation under the GB regime.

My officials inform me that that was a result of an oversight in drafting and that we let the committee know as soon as we could. I express my apologies for that oversight in what is clearly a very technically complicated piece of work.

10:45

The Convener: Thank you for that explanation, minister, and for notifying the committee by letter so that we could consider that prior to today's meeting.

The first questions come from Jackie Dunbar.

Jackie Dunbar: What are the current deadlines set out in the GB Biocidal Products Regulations? How will the proposals change those?

Màiri McAllan: We know that this is technical. I will try to address each question in turn, and I have legal and policy colleagues here to help me with that.

I like to think of the timelines in the regime as being in two tiers. First, there are timescales for resubmitting applications in the transitional period. There was a 90-day period for applications for which the UK was originally the evaluating member state and a 180-day period if an EU member state was originally the evaluator. Once an application been resubmitted, that triggers a need for the Health and Safety Executive to validate it "without delay". That is the term that is used in the legislation.

The applicant then has to pay a fee, for which I understand they have 30 days. Once that has been done, that triggers the period in which the HSE must consider the application. Previously, for certain applications that are touched by this SI, that would have been 365 days. We are now proposing that the deadline should be 31 December 2027, in order to give the HSE time to evaluate the influx of applications that it has received since EU exit.

That is the principal change. I ask my colleagues whether they have anything that they want to add.

Dan Merckel (Scottish Government): I turn to my legal colleague, Luigi Pedreschi, to give a further answer on the question of timescales.

Luigi Pedreschi (Scottish Government): As the minister outlined, the GB regime sets out various deadlines by which an application must be authorised. The trigger point at the start of those timelines is the date on which the Health and Safety Executive notifies the applicant of the relevant fees. Those fees depend on the type of application in question.

As the minister said, the applicant, once notified, has 30 days in which to pay their fees. Once they have done that, the Health and Safety Executive must either accept or validate the application. The distinction between acceptance and validation depends on the type of application. The evaluation period begins thereafter. That will be 365 days for a standard national authorisation, but it might be shorter for a different type of application.

The proposed law postpones the date on which the HSE needs to notify applicants: it pushes it back to 31 December 2027. That means that, if an applicant is notified of the fees at that later date, the application evaluation period will run from that date onwards.

When an applicant is notified of the fees sufficiently in advance of 31 December 2027, so that the HSE can complete its evaluation before 31 December 2027, it must complete its evaluation by that date.

Jackie Dunbar: Minister, what discussions have you or the Scottish Government had with the UK Government about the impact of the loss of access to EU data on the HSE's timescales for evaluating applications for authorisations?

Màiri McAllan: I mentioned in my opening remarks that we are trying to work through what would be fair to call a situation that we did not want to find ourselves in and that is not of our making. Throughout the whole preparation process for EU exit, the Scottish Government made it absolutely clear that negotiated access to the EU chemicals database was important and should be pursued. Regrettably, that has not transpired, as the UK Government pursued the hardest of Brexits, and we no longer have access to the EU database.

However, the question was about the extent to which the Scottish Government has made representations to the UK Government. We did that throughout the preparations for Brexit.

Natalie Don: Good morning. My question follows on directly from the previous one. Will the loss of access to that data result in delays in evaluating applications for authorisation in the longer term beyond this period?

Màiri McAllan: I am hesitating, because it is difficult to predict with certainty what all the implications of EU exit will be across biocidal products and the chemicals regime. We are attempting to manage GB-wide processes as best we can. We have moved from a situation in which authorisation was done on an EU-wide basis. In some circumstances, we would have had mutual recognition between member states whereby, if something had been authorised in one country, it would have been recognised elsewhere. It is clear that that reduced the authorisers' workload.

To give the committee some confidence, for normal applications, we would expect most of the required information to be on the face of the application. In those circumstances, not having access to the EU database should not hinder the authorisation process.

However, there is no doubt that it is a complicated situation and that it is sometimes very difficult to foresee what the problems might be before they arise.

The Convener: A lot of chemical applications will be for on-label use but will involve a different permutation of the chemical application. They will have data sheets anyway, and, if companies have applied for use in the European Union, surely they will be submitting that information voluntarily, and the questions asked by the European Union will also apply to the HSE regarding the use of that chemical in the UK. Therefore, it should surely not slow things up that much.

Màiri McAllan: On the latter point, if I understand you correctly, the information that is required for authorisation in the EU and in GB will be similar. As I said, for normal applications, we would expect the required information to be on the face of the application, so I would not expect delays for such applications to run beyond the transitional period, in which the delays are simply the result of a big influx of applications, rather than necessarily a lack of information on each application.

The Convener: I want to check that I understand this. The application processes in the UK and the EU will run in tandem, so a lot of information that will be asked for will be similar. I cannot see how things will be slowed down for companies.

Màiri McAllan: I will bring in my colleagues. I do not think that there is any guarantee that the processes will run in tandem. We have asked the HSE to consider the way in which they prioritise the applications that they get, but I do not think that running in tandem is something that—

The Convener: I will bring in Dan Merckel on that. It is unlikely that most chemical manufacturers will see the UK as a big enough market to develop a product for. Surely they will do that for the UK and the EU in tandem.

Dan Merckel: I do not think that things will run in tandem. The thing to bear in mind is that there are many different kinds of applications here. There is not just one type of application, unfortunately. Where there is prior knowledge in the EU system that we might not have access to in the GB system, that could result in delays. However, with normal applications that are subject to the SI, that should not result in any delays, as the minister said. The information available in a data package as submitted should be sufficient to allow the HSE to conduct its evaluation.

As we have said all along and as the minister has said, it is a very complicated situation. There are lots of different kinds of applications and lots of different provisions to make sure that everything is assessed in time in the GB regime.

That is against the backdrop of a staggered approach in the EU whereby evaluations are driven entirely by when an application is made to a competent authority in a particular member state, which can happen at any time. It is also worth mentioning that delays in EU member states' evaluations are common in the EU system.

There are competing elements that mean that it is difficult to compare the timescales in the two regimes.

Fiona Hyslop: That is interesting. From what I have heard, it sounds as though it would be possible to piggyback on EU applications, but you would be reliant on the information that the applicant provided to the EU, as opposed to the approvals database—is that correct?

Dan Merckel: Yes, I think so. If the applicant was interested in trading in the GB market as well as in the EU one, there would be nothing to prevent their submitting an application to both regimes.

Fiona Hyslop: But you would be reliant on the applicant as opposed to the approvals database.

On the volume of work, what discussions has the Scottish Government had with the UK Government about how it ensures that the HSE is sufficiently resourced to carry out its functions in this area effectively and to reduce delays in processing authorisations under the GB biocidal product regulatory regime?

Màiri McAllan: As would be expected, a lot of work was done in preparation for EU exit and in anticipation of what the HSE would undertake on behalf of devolved ministers and the secretary of state, because it is our agent in such matters. There was a scaling up of the chemicals regulation division in the HSE to ensure that it had the resources. That was matched by financial resourcing being scaled up as well in preparation for the work that was coming.

To give some context for the five-year period, it is not that the HSE has just surmised that that is the amount of time that it will need. It is based on modelling of how quickly it is getting through applications as it is.

There has been a scaling up as part of EU exit preparations, and the time that is now being asked for is based on modelling of what the HSE thinks is possible.

Fiona Hyslop: How does that compare with the EU's progress and pace in approvals—or, indeed, non-approvals? How will the delays that we are hearing about impact the Scottish Government's ability to keep pace with the EU on that?

Màiri McAllan: There is undoubtedly scope for a lack of alignment between the GB regime and the EU regime. Something could be approved in the EU and not in GB, and vice versa. Dan Merckel mentioned that the EU regime can be subject to delays as well.

The practical implications of a lack of alignment are different, depending on the type of product and whether it was on the market already prior to EU exit or whether it is a new product. It is all different, but there is scope for misalignment.

Mark Ruskell: With the delay in evaluations, is there a danger that we will run behind the science? What assessment has been made of the potential risks of that to the environment and human health?

Màiri McAllan: It is a good question. Because of the many different permutations—the different products, the different times that they have been on the market and the different conditions of use—it is difficult to answer it all in one go. However, I take a lot of comfort from the fact that the EU has informed the HSE that the active substance in the product that makes it biocidal will have been party to an EU-wide consideration. We have therefore been given comfort on the effect of the active substance.

11:00

Different products are treated differently. A product that was already on the market prior to transition will be able to stay on the market a bit longer to allow the influx of applications to be processed, but the conditions of use will still be in place. A new product will not be able to be on the market until after that extended period. I take comfort in that, too.

That said, I will hand over to Dan Merckel to see whether he has anything to add. I should say, though, that this all comes back to a point that I made in my opening remarks, which is that we need a process of oversight and authorisation that works properly. Albeit that we do not want to be in this position, the risks to the environment, human health and the economy are made greater by not allowing that extension for authorisations to take place.

I have probably said everything that there is to say. Dan, do you want to say anything else?

Dan Merckel: I just want to emphasise something that the minister mentioned, which is that biocidal product regulation in GB and the EU is a two-tier system. All products that have a biocidal action because of active substances must be approved and must go through a rigorous safety and efficacy assessment to be placed on a list, and all approved active substances must be on that list.

When that evaluation takes place, the applicant must also submit one example of a product type in which the active substance is used, to check for safety in that product. The HSE has confirmed that all the active substances in the very large number of products that need to be evaluated have been through that process, which gives us a baseline of safety.

It might also be worth mentioning that, if we were to have intelligence that a product in the EU had not been authorised following evaluation by a member state, we would hope that the HSE would prioritise that particular product for evaluation here, if it was in the GB system.

Mark Ruskell: We would hope that would be the case, too.

I want to ask about the potential for increased animal testing, which is something that has been raised in relation to the registration, evaluation, authorisation and restriction of chemicals regulation.

The Convener: I am sorry, Mr Ruskell—I did not quite hear that question.

Mark Ruskell: I just want to raise the issue of the potential for increased animal testing, which has been raised in relation to the implementation of REACH.

Màiri McAllan: Mr Ruskell, could you elaborate further on that?

Mark Ruskell: I raised this point with Michael Gove, who actually took it quite seriously. If there is an evaluation process, could that lead to increased animal testing if particular products, or any active ingredients within them, effectively have to be re-evaluated?

Màiri McAllan: I see what you mean and why that would be a pertinent question in the context of chemicals regulation in general. However, in the case of this SI, because of the specific tweaks that it seeks to make to timescales, because of the fact that no new product will enter the market within the timeframe and because any existing product that has had its time on the market extended will do so under the current conditions of use, I am comfortable that there is no risk in that respect.

Dan Merckel might wish to add to that, but we might also be able to come back to you with more information.

The Convener: I think that Dan has already given the answer, which is that all the chemicals

sitting within the packet of chemicals looking for authorisation already had an on-label use. As they are already being used, they would not need to be tested and re-evaluated. Is that not what you said, Dan?

Dan Merckel: Yes. The applications are already there. Unless the applicant has put in a data waiver and has tried to demonstrate that they do not need to conduct a particular test, the testing has already been conducted in the particular cases that this SI addresses. That said, I understand the member's point, which is a wider concern across the GB chemicals regime.

The Convener: Liam Kerr wants to come in.

Liam Kerr: Given the potential for risk and significant delays in evaluating authorisations, why has the Scottish Government not engaged or consulted with stakeholders to assess the impact of the proposals?

Màiri McAllan: I certainly agree with the first part of the question, about the potential for risks known and unknown. However, on the second part, we have had on-going engagement with stakeholders—industry, trade, and environmental NGOs—since 2017 through the Scottish chemical policy network. That is exactly the place for on-going consultation and engagement with stakeholders, whom we encourage at all stages of what is a complex journey to come forward and raise issues with us.

Liam Kerr: Forgive me, minister, but may I press you on that? The type 1 notification that you submitted to the committee says:

> "these new measures are aimed solely at ensuring the functioning of the GB BPR and, therefore, we have not undertaken any engagement, or any formal consultation, about these specific amendments."

That seems rather at odds with the answer that you have just given. Can you clarify the point?

Màiri McAllan: Of course—I am happy to do so. The network was set up in 2017 as a forum in which stakeholders across industry, trade and ENGOs could approach the Scottish Government with concerns. It is not true to say that we did not consult. The forum is there, should stakeholders wish to raise matters with us, and we actively encourage them to do so.

Liam Kerr: Forgive me, minister, but the type 1 notification says that there has been no formal consultation.

I think that I understand what you are saying. You are saying that the opportunity is there, but the actual engagement and consultation have not, in fact, been carried out, as has been notified to the committee through the type 1 notification. Is that correct?

Màiri McAllan: That is correct. The opportunity is there and has been since 2017. The network is a live forum, in which we engage reciprocally with stakeholders across the piece. What you have quoted is right.

I will hand over to Dan Merckel to say a little more about the decisions that were made about what, specifically, to consult on, and when. However, as I have said, that forum is there, and it operates well as a go-between for the Government and stakeholders.

Dan Merckel: I would emphasise that, as this is a cross-GB regime—obviously, the market for biocidal products goes across the whole of GB—it would arguably be better for any consultation to take place at the GB level. As the minister has said, we have in place a forum that allows stakeholders in Scotland to approach us with any issues that they might have. It is probably also worth mentioning that we were made aware of the issue only in May, which was quite late on, so we would not have had the chance to consult actively on it.

Monica Lennon: I hope that this is an easy question. We have had your written submission, but are you aware of any change to the instrument's proposed laying date at Westminster? We believe that the date is 17 October. Is that still the case?

Màiri McAllan: Yes, as far as I am concerned. I am not aware of any changes; the date in mind is 17 October, and officials have been engaging with the HSE on that.

I see that Dan Merckel does not have anything else to say on that, so, as far as we are concerned, the date is still 17 October.

Monica Lennon: Good. You seem to be confident about that, and a discussion has taken place.

Just for the record, given the short timescales involved, which have meant that the committee has had only a short time to consider the notification—roughly 10 or 11 days, instead of the 28 days that are normally available for scrutiny—why was the notification not sent to the committee until Friday 23 September?

Màiri McAllan: I apologise to the committee for the short timescales that have transpired, which have been due to a combination of factors. First of all, as Dan Merckel mentioned, this is a GB-wide piece of work. We received drafts, which have then been changed. That is not anyone's fault—it is just the nature of what we are doing. This is a complicated set of provisions that requires close consideration by officials and legal colleagues. The period of mourning the passing of Queen

Elizabeth also affected when we could officially come to the committee.

I can only apologise for the delay and say that we are glad to be here today to give evidence.

Monica Lennon: Thank you for that, minister, and for acknowledging how complex this item is. It is important that the committee gets as much time as possible to examine it.

You have mentioned a combination of factors for the delay, including the death of Queen Elizabeth and the period of national mourning. If we were to make contingency plans for other royal or national events in the future, could we avoid such delays? Clearly, there is a lot of pressure on officials. Could anything be done differently to protect the timetable for scrutiny, which I am sure you will agree is important?

Màiri McAllan: I absolutely agree. For our part, we commit to continually improving on the time taken to assess the drafts that we receive and for Scottish ministers to give their views on them and get everything to the committee. With the extraordinary event of the Queen's passing, we all had to consider and deal with certain practical issues. It was quite an unusual situation, but, of course, we will have learned from it and hope that we will not have to deal with such instances very often. Certainly, we will have learned about interaction with committees during such periods. On the parts that were entirely in our gift, we commit to continually trying to improve.

The Convener: Monica, I know that the minister does not need defending, but she came at fairly short notice today. This meeting was not planned until the latter part of last week, so the Government has shown the committee some flexibility, and I thank the minister for that.

As no member has indicated that they have further questions, I thank the minister and her officials for taking part.

We move to agenda item 4, which is consideration of the consent notification for the Biocidal Products (Health and Safety) (Amendment) Regulations 2022, which have yet to be laid. The Scottish Government proposes to consent to the instrument, as we addressed in our consideration of agenda item 3.

Several options are open to the committee, all of which would result in our sending a letter to the Scottish Government, stating our view. The first is that, if members are content, we can approve the proposal to consent. The committee will then write to the Scottish Government, indicating as much.

Secondly, members can approve the proposal to consent and, in the letter confirming that, seek further information on any further queries that they might have.

If members are not content with the proposal, the recommendations that we can make to the Scottish Government are listed in paragraph 9 of paper 3. We could indicate that the Scottish Government should not give consent and propose either that it produce an alternative Scottish legislative solution or that it request that the provisions be made in a UK SI laid in both Parliaments under the joint procedure, or we could indicate that the provision should not be made at all. I hope that I have made the options clear.

If members have no comments on the evidence that we have heard—and I am not seeing anyone leaping in to make a comment—I will move to the substantive question on this item. Is the committee content for the provision set out in the notification to be made in the proposed UK statutory instrument?

Members *indicated agreement.*

The Convener: We are agreed. Gosh—that was simple and saved us from having a vote.

We will write to the Scottish Government to that effect by its deadline of 11 October 2022. Is the committee content to delegate authority to me to sign off a letter to the Scottish Government, informing it of our decision today?

Members *indicated agreement.*

The Convener: I was hoping that Natalie Don was not about to say no there. We are agreed.

Minister, you can slip away now. I know that you are busy.

The Persistent Organic Pollutants (Amendment) (EU Exit) Regulations 2022

The Convener: Agenda item 5 is consideration of another consent notification for a UK statutory instrument that has not yet been laid.

The Scottish Government proposes to consent to the instrument, which, as the clerk's paper indicates, relates to the new UK chemicals regulatory regime for persistent organic pollutants.

As discussed under the previous agenda item, a protocol has been agreed between the Scottish Government and the Scottish Parliament for situations in which the Scottish Government proposes to consent to certain types of secondary legislation made by the UK Government as a result of EU exit. The protocol sets out how the Scottish Parliament may scrutinise such decisions. There is a statutory requirement that the Scottish Government's consent be sought for this proposed instrument.

I refer members to the paper for this item. Again, multiple options are open to the committee on the consent notification. I will not go through

them all again—they are exactly the same as those for the consent notification that we have just considered.

If members have no comments, I will move to the substantive question. Is the committee content that the provision set out in the notification be made in the proposed UK statutory instrument?

Members *indicated agreement.*

The Convener: We are agreed. We will write to the Scottish Government to that effect. Is the committee content to delegate authority to me to sign off a letter to the Scottish Government, informing it of our decision today?

Members *indicated agreement.*

The Convener: That concludes the public part of our meeting.

11:16

Meeting continued in private until 12:37.

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