



OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 5 March 2024

Session 6



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NET ZERO, ENERGY AND TRANSPORT COMMITTEE

9th Meeting 2024, Session 6

CONVENER

Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Monica Lennon (Central Scotland) (Lab)

*Douglas Lumsden (North East Scotland) (Con)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Richard Dixon (Environmental Standards Scotland)

Jim Fairlie (Minister for Agriculture and Connectivity)

Gary McIntyre (Transport Scotland)

Mark Roberts (Environmental Standards Scotland)

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

Bettina Sizeland (Transport Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
Net Zero, Energy and Transport
Committee

Tuesday 5 March 2024

*[The Deputy Convener opened the meeting at
09:21]*

Interests

The Deputy Convener (Ben Macpherson): Good morning, and welcome to the ninth meeting in 2024 of the Net Zero, Energy and Transport Committee. We have apologies from the convener, Edward Mountain, in whose place Graham Simpson is attending as the Scottish Conservative and Unionist Party substitute member. I welcome him to the meeting.

Agenda item 1 is a declaration of interests. As this is Mr Simpson's first meeting as a substitute member, I invite him to declare any relevant interests.

Graham Simpson (Central Scotland) (Con): I have no relevant interests to declare.

The Deputy Convener: Thank you.

**Decision on Taking Business in
Private**

09:22

The Deputy Convener: Agenda item 2 is a decision on taking business in private. Do members agree to take in private item 7, which is consideration of the evidence that we will hear under item 5, on environmental governance in Scotland?

Members *indicated agreement.*

Subordinate Legislation

National Bus Travel Concession Schemes (Miscellaneous Amendment) (Scotland) Order 2024 [Draft]

09:22

The Deputy Convener: Agenda item 3 is consideration of a draft statutory instrument. For this item, I am pleased to welcome Jim Fairlie, Minister for Agriculture and Connectivity. As this is the first time that the minister has appeared before us in his new role, I take the opportunity to congratulate him on his appointment. We look forward to working with you, minister.

The Minister for Agriculture and Connectivity (Jim Fairlie): Thank you very much.

The Deputy Convener: The minister is joined by, from the Scottish Government, Dorothy Cohen, lawyer, and, from Transport Scotland, Gary McIntyre, economic adviser, and Bettina Sizeland, director of bus, accessibility and active travel. Welcome, and thank you for joining us today.

As the instrument has been laid under the affirmative procedure, it cannot come into force unless the Parliament approves it. Following the evidence session with the minister, the committee will be invited, under the next agenda item, to consider a motion to recommend the instrument's approval. I remind everyone that officials can speak under this item, but not in the debate.

I invite the minister to make an opening statement.

Jim Fairlie: Good morning, convener, and thank you very much for having me along. I am very pleased to take on my new portfolio as Minister for Agriculture and Connectivity, which includes bus and concessionary travel, and I thank the committee for inviting me to discuss the draft order.

The order sets the reimbursement rate and capped level of funding for the national bus travel concession scheme for older and disabled persons in 2024-25, as well as the reimbursement rate for the national bus travel concession scheme for young persons in the coming financial year. In doing so, the order gives effect to the agreement that we reached in January with the Confederation of Passenger Transport, which represents Scottish bus operators.

The objective of the order is to enable operators to continue to be reimbursed for journeys that are made under the older and disabled persons scheme and the young persons scheme after the expiry of the current reimbursement provisions on 31 March 2024. It specifies the reimbursement

rates for both schemes and the capped level of funding for the older and disabled persons scheme for the next financial year from 1 April 2024 to 31 March 2025.

The model for setting reimbursement rates for the older and disabled persons scheme was established in 2010. As a result of developments in the wider bus operating market since then, it was necessary to review the analytical assumptions that underpinned the model. A new model has now been developed for the older and disabled persons scheme, which considers the latest available data and evidence on industry costs, passenger demand and travel behaviours.

The evidence that is required to produce a refreshed YPS model is still emerging, as the scheme is still in its relative infancy and travel behaviours are continuing to develop. Accordingly, it was agreed with the CPT that the reimbursement rates for the young persons scheme for the current year will be retained for 2024-25. For the young persons scheme, the proposed reimbursement rates are 43.6 per cent of the adult single fare for journeys made by passengers aged five to 15, and 81.2 per cent of that fare for journeys made by 16 to 21-year-olds. As in the past year, a budget cap has not been set for the young persons scheme in 2024-25.

The proposed reimbursement rate in the financial year 2024-25 for the older and disabled persons scheme has been amended from 55.9 per cent to 55 per cent of the adult single fare, and the capped level of funding will be £203.5 million. A realistic level has been set, which takes into account patronage levels and recovery in the scheme since Covid-19.

The rates that have been set are consistent with the aims that are set out in the legislation that established both schemes: that bus operators should be no better and no worse off as a result of their participating in the schemes; and that they will provide a degree of stability for bus operators.

Free bus travel enables people to access local services and to get the health benefits of a more active lifestyle. It should also help to strengthen our response to the climate emergency, support our green recovery and embed sustainable travel habits in young people. The order provides that those benefits will continue for a further year on a basis that is fair for operators and affordable to taxpayers.

I commend the order to the committee, and I will be happy to answer any questions.

The Deputy Convener: Thank you for that, minister.

We now move to questions, the first of which comes from me. In setting out the content of the

order, you said that the reimbursement rate for the older and disabled persons scheme has been reduced by 0.9 per cent. Can you reassure the committee that that level of payment is sufficient to cover the costs that operators will incur in providing concessionary travel?

Jim Fairlie: Yes, I can. That rate was based on the modelling and the fact that we did not use all the funding that was made available for the scheme last year. The model has been set in such a way that the predicted usage reflects the usage in years gone by, so the cut is in line with anticipated use.

The Deputy Convener: Thank you for setting that out. The next question comes from Graham Simpson.

Graham Simpson: Hello, minister. I, too, welcome you to your new role and look forward to working with you on the bus aspect of that role.

In the order, you have cut the reimbursement rate for the older persons scheme, but not for the younger persons scheme. Why have you cut the rate for the older persons scheme and set a cap on it?

Jim Fairlie: The cap is based on the predictions of what the usage will be. The modelling is pretty good, because it has been done since 2010. As a result of that, we have a pretty reasonable idea of the expected requirement for this year.

Graham Simpson: What do you expect the use to be?

Jim Fairlie: The use will be whatever has been set out in the modelling.

Graham Simpson: Well, you tell me.

Jim Fairlie: I will need to come back to you with that figure. I do not have it to hand. If any of my officials have it to hand, I am quite happy for them to give it to you.

09:30

Gary McIntyre (Transport Scotland): There is a range of uncertainty around any demand-led scheme. For the older persons scheme, the working assumption is that patronage in the coming financial year could average around 80 per cent of pre-Covid levels.

Graham Simpson: So you are basing the decision on something that you do not know.

Jim Fairlie: No, we are basing the decision on patronage levels since Covid. We have come out of Covid, but patronage has not reached the pre-Covid levels.

Graham Simpson: We are seeing bus passenger numbers bounce back, which is a great

thing, and I presume that we would want to see that continue, no matter what age group is using the buses. I am sorry; I am looking at Mr McIntyre when I should be looking at the minister. If the numbers continue to bounce back, is it not possible that you could reach the cap that you have set?

Jim Fairlie: If we reach the cap, there is no provision to go above that, so that is a consideration. The level of usage relative to the cap will be reviewed on a monthly basis. The predicted usage is based on the current modelling, which gives pretty accurate figures and shows that usage is running at about 80 per cent of pre-Covid levels.

There is no cap on the young persons scheme, on the basis that we do not know what that modelling is, in order to ensure that that scheme will encourage more young people to use buses. The officials will correct me if I am wrong, but I think that I am right in saying that the overall increase in usage is largely to do with the fact that far more young people are using buses than did so previously.

Graham Simpson: That is a really good thing.

Jim Fairlie: It is exactly what we are trying to encourage.

Graham Simpson: Basically, you are telling the committee that you do not know how many young people will use the young persons scheme.

Jim Fairlie: Not at the moment, no.

Graham Simpson: Hence there is no cap.

Jim Fairlie: We need more modelling and more data.

Graham Simpson: But you have also said that you do not actually know how many older people will use the older persons scheme.

Jim Fairlie: Yes, but we have far better historical data for the older persons scheme.

Graham Simpson: We want more older people to start using the bus.

Jim Fairlie: If we can encourage more people to use the bus, that is exactly what we will try to do, but the current funding model is based on the number that we think will do so. If that increases in years to come, I am sure that we will be able to look at that, but, given the budget constraints that we face right now and the fact that we have a better idea about the older persons scheme than we do about the younger persons scheme, that is why the cap was set.

The Deputy Convener: Minister, I note that you said in a previous answer that that will be reviewed on a monthly basis.

Bob Doris has a supplementary question. Mr Simpson, are you happy for me to let him in now, before you come to your next question?

Graham Simpson: Absolutely.

Bob Doris (Glasgow Maryhill and Springburn) (SNP): In following that line of questioning, we might have lost sight of the purpose of having a cap. I appreciate that there is pretty sophisticated modelling, given that we have had a concessionary travel scheme for more than a decade.

I am happy for the minister to tell me that I am wrong, but it is my understanding that the cap—which was not exceeded in the previous financial year, so no bus company lost out—is there to protect the public purse. That is pretty important. Can you confirm that, if there was no cap, we could not protect the public purse?

We have modelling work on the concessionary scheme for older people and on what their usage looks like, but we are not yet in a position to administer a cap for the younger persons scheme because the data that we have is—relatively speaking—in its infancy. The heart of the issue is the purpose of the cap.

Jim Fairlie: That is exactly it—the cap is there to protect public funding. Before Covid, the reimbursement rate for the older persons scheme was set by using an economic model that was agreed with the CPT, which is relatively happy with where we are at the moment. No one likes to have their budget capped or to lose money—I absolutely accept that—but we are in incredibly difficult financial straits at the moment. The Government has taken the right approach in ensuring that the cap will protect funds, on the basis of the modelling that has been done.

Bob Doris: That is really helpful.

I apologise if I sound like a pedant, but the idea of “losing” money is open to interpretation. If passengers were not using the buses, the bus companies would not get any money. Perhaps we should talk about the bus companies not maximising their income, rather than about them losing money. Is that an appropriate alternative way of using the terminology?

Jim Fairlie: If that is the terminology that you would like to use, Mr Doris, I am happy to let you use it.

The Deputy Convener: Monica Lennon wants to come in on the same issue.

Monica Lennon (Central Scotland) (Lab): Welcome, minister, and congratulations on your appointment.

Jim Fairlie: Thank you.

Monica Lennon: What happens in the scenario where the cap is reached? What would be the impact on bus operators and users? You have talked about the modelling of this. What are the risk factors? How likely is the scenario that the cap could be reached within the financial year?

Jim Fairlie: If we meet the limits on the capped amount, and if monitoring in-year suggests that the claims are likely to exceed the cap, claims for the latter part of the year are paid at a lower rate than is set out in the legislation, so as to keep the total payments under the scheme within the statutory cap. If this was the case, Transport Scotland would write to operators as soon as possible so that they would know the indication for the year to come.

Monica Lennon: So, that is the procedure. What are the likely consequences? Could they involve a bus operator saying that it is no longer viable to provide a certain route or service? Is that what we are talking about?

Jim Fairlie: Individual bus operators will decide whether they want to be part of the scheme. We will have to deal with that issue if it arises as we get nearer to the end of the scheme.

Monica Lennon: I am a little concerned. We discussed earlier how we want to get more people on to buses and sustainable transport. We want to ensure that that is sustainable. We could reach the cap if we continue to be successful in getting people on to buses, and we are asking operators to provide concessionary travel at a much reduced rate to them. They could come back and tell the minister or Transport Scotland that they can no longer run a service because it is not commercially viable. Is that part of your modelling? Do you have any reassuring answers, not only for people in my area of Central Scotland, but for all of us?

Jim Fairlie: No, I cannot reassure you that there will be more funding, because there will not be. The funding will be split; the cap is set as what the cap is. If we get to a position where the cap is reached, Transport Scotland will communicate with the bus operators. However, I emphasise that the modelling has been done on the basis of known figures that cover a long period of time. Currently, the figure for patronage is sitting at 80 per cent of the figure prior to Covid, and there is no indication that it will increase to the level at which we will have to do anything with the budget cap.

Monica Lennon: Okay. You sound confident. Can we see the modelling after this meeting? Can it be shared with the committee?

Jim Fairlie: Yes, it can be shared with the committee.

Monica Lennon: Wonderful.

The Deputy Convener: Bob Doris has another supplementary.

Bob Doris: I think I have been kicking around the Parliament for too long, because I remember Stewart Stevenson—in a previous incarnation of your current role, minister—outlining the situation.

I want to clarify something. First, thank goodness there is a cap, because we have to protect the public purse—that is a positive, not a negative, thing. However, my understanding is that, if we reach that cap and we get the data, no service will be impacted. What will happen is that we will get the data for the next round of negotiations on setting the budget for the next concessionary travel scheme. Reaching the cap will inform the data for the next discussions that we have with bus operators, rather than put at risk any bus service, anywhere. Is that the situation?

Jim Fairlie: Yes, it is.

Bob Doris: Thank you.

The Deputy Convener: Graham Simpson, do you want to ask anything further before we move on?

Graham Simpson: Yes, I would like to continue on that. There are some interesting questions there. You have said, minister, that if we get near the cap, the reimbursement rate will be reduced. Just so that I understand, what will it be reduced to?

Jim Fairlie: That will very much depend on the level of the cap and of the use. You are asking me to answer hypotheticals, Mr Simpson.

Graham Simpson: It is not a hypothetical—

Jim Fairlie: It is a hypothetical because, right now, we have set a cap on the basis of the modelling that has been done, so we have a relatively good idea of where it will be. If that changes, we will have to adjust accordingly, using the information that we have at that time. However, I cannot tell you what it will be because I do not know what will happen in the future.

Graham Simpson: Is it not written down anywhere in legislation?

Jim Fairlie: Is what not written down in legislation?

Graham Simpson: What the cap would reduce to.

Jim Fairlie: I think that I have already explained that. Let me see whether I can find this in writing so that it makes sense to you. If monitoring in-year suggests that the claims are likely to exceed the cap, claims for the latter part of the year are paid at a lower rate than that set out in the legislation, so as to keep total payments under the scheme

within the statutory cap. If this was the case, Transport Scotland would write to operators as soon as possible during the financial year to let them know.

The Deputy Convener: Minister, just for the record, could you detail what you are reading from?

Jim Fairlie: I read that from a briefing from my officials.

The Deputy Convener: Okay. Thank you.

Graham Simpson: That is not mentioned anywhere in the order—it is completely new information that the cap could be reduced to some figure that we do not know. The reimbursement rate will be reduced. [*Interruption.*]

The Deputy Convener: Excuse me, but Bettina Sizeland is going to speak.

Graham Simpson: I am sorry, Mr Doris, but you are not the minister.

Bettina Sizeland (Transport Scotland): The cap has been set at a reasonable level based on the data that we have. Unfortunately, older persons have not gone back to buses at the levels that we anticipated from pre-Covid. We anticipate patronage of 80 per cent. The figure has sat at below 80 per cent for quite a long time. We have monitored the data monthly and we make payments on a four-weekly basis, so we understand what the levels of patronage and the levels of payment are.

In 2018-19, we had a situation in which we breached the cap. We wrote to the industry and agreed a bit more budget to cover some of the costs. However, the cap is set to ensure that we are financially prudent and that we protect the public purse. That means that bus operators will not raise their fares too much because the money would then get used up much more quickly, and everybody will act in a reasonable way. However, the point of the reimbursement rate, which is based on our very detailed modelling, is to ensure that bus operators are no better and no worse off in respect of the journeys that are made.

Graham Simpson: Given that the reimbursement rate could be reduced if we get near the cap, there is no incentive for operators to grow the number of older people who use the buses, is there? If they do so and get near the cap, they will get less money.

Jim Fairlie: We are in a situation in which we have a fixed budget—

Graham Simpson: That is correct, is it not?

Jim Fairlie: —and budget constraints. With those budget constraints, we have set a cap at the

level that we think the usage and the patronage will be. That is where we are.

Graham Simpson: Okay. I have one other question.

The Deputy Convener: I think that Mark Ruskell wants to ask a supplementary question on that matter first, Mr Simpson.

Graham Simpson: Sure.

Mark Ruskell (Mid Scotland and Fife) (Green): I was going to ask about how long the older and disabled persons scheme has been in place, how many times the cap has been breached, and what happened, but I think that Bettina Sizeland—

Jim Fairlie: I am sorry, but I did not hear what you said, Mr Ruskell.

Mark Ruskell: I was going to ask about how long the ODPS has been in place and how many times the cap has been breached during that time, but I think that Ms Sizeland has already answered that question. If there is any more detail about that that you want to get on the record, it would be useful to know.

Bettina Sizeland: You asked how many times the cap has been breached. The time that I mentioned is the only time that it has been breached, and that was the—[*Inaudible.*—]—at the time.

Mark Ruskell: Was that at a time when patronage was growing substantially, or was that predicted? I think that we are now growing back very slowly from Covid—that seems to be the case from the modelling that I have seen. From discussions with bus companies, I think they are not expecting a huge surge in older people being back on the buses. What was the trend that led up to the breach of the cap in a single year, in 2018?

09:45

Bettina Sizeland: Patronage was growing, but the issue in 2018-19 was that operating costs were rising.

The Deputy Convener: Final question, Mr Simpson.

Graham Simpson: I have a question on the under-22 scheme. I apologise—it does not relate directly to the order, but I will ask it anyway. In December I led a members' business debate on the minority of under-22s who were abusing the scheme, and Fiona Hyslop agreed to look at how that might be tackled. Can you give us an update on that? If you cannot do so now, perhaps you could write to the committee on how that work is progressing.

The Deputy Convener: Before you come in, minister, given that this agenda item is the SSI, an undertaking to write to the committee would suffice.

Graham Simpson: That is absolutely fine.

Jim Fairlie: Okay—no problem. We will write to the committee on that issue.

The Deputy Convener: Jackie Dunbar has a question on the young persons scheme.

Jackie Dunbar (Aberdeen Donside) (SNP): My question has already been answered really well. Minister, I congratulate you on your new position and welcome you to the role. The question why the young persons scheme is not subject to a payment cap has already been asked, and you have answered it. Could that be considered in future?

Jim Fairlie: I assume that we will get to a topping-out point, but I have absolutely no idea at this stage where that will be. We want to do as much as we can to encourage as many young people as possible on to buses, so that that becomes their habit-forming way of travelling. That is part of what we are trying to do. Once we have more data in front of us, we will review that, which will allow us to make decisions on what that will look like in the future.

Jackie Dunbar: I realise that I was asking a crystal ball question—asking you to look into the future—so I appreciate that answer.

Mark Ruskell: Could you stay with your crystal ball for a minute, minister?

Jim Fairlie: I have not managed up to now.

Mark Ruskell: The young persons scheme has been really successful. There were a few teething problems at the beginning, but there is now substantial uptake among young people under the age of 22 who have the card.

Is there a target for how much you want the percentage of cardholders to go up in the next year? Will we reach a plateau in the numbers of people and their families who want a card, or do you think there is still a gap and that councils and schools could encourage young people to take up the card in greater numbers? Are we at the limit of uptake of the card, or do you think there is still a little way to go in getting the last folk on board?

Jim Fairlie: There is definitely scope for us to get more people on to buses. I think that your question alludes to how many people we can get on. We are going to encourage as many people as we possibly can.

The young persons scheme has been hugely successful from a number of points of view. It is allowing young people to take jobs that they would

not have been able to do without the scheme. I heard about a young girl who lives in my constituency who is travelling to Edinburgh to work in a job in the arts that she would not have been able to do without the scheme. Young people are able to go to education facilities that they would not normally have been able to attend.

More important for me is that they can see family—because families are spread all over the country now. Young people are able to jump on a bus to go and see their grandparents. To me, that is absolutely fantastic, and it encourages use of public transport.

We want to make sure, as much as we possibly can, that more people get the opportunity to use buses. That is the benefit of the scheme. To answer your crystal ball question, I do not know what the figure will top out at. The more people the better, is what I would say.

Mark Ruskell: Scotland is trailblazing here. There are not, to my knowledge, any other countries in Europe that offer a free travel for young persons scheme.

I want to ask about a potential extension to the scheme to people who are in the asylum system. We have heard about the benefits for young people. Young people who are asylum seekers are currently using the young persons scheme and people who are eligible are using the older and disabled persons scheme. However, the Government made a commitment to extend concessionary travel to everybody who is languishing in the asylum system in Scotland. It might be a bit early to say, but would those people fall under an extension of one of the concessionary schemes or would it be a bespoke card or something separate to the current concessionary travel legislation that would enable them to get on the bus? I think that the commitment was that every asylum seeker, regardless of age or disability, would be able to access free travel because of the crushing circumstances in which they find themselves.

The Deputy Convener: Minister, as with Mr Simpson's previous related question, I am happy for you to answer now but, if you want to follow up in writing, that would be perfectly reasonable.

Jim Fairlie: We will probably follow up in writing, because I am aware that we are going off topic. Officials are at an early stage of developing a new commitment to asylum seekers, but we will write to the committee with further details on that.

Monica Lennon: I am listening with interest, minister, because you are clearly passionate about the opportunities for young people to use the concessionary travel scheme.

You talked about your constituent being able to travel into the city for education purposes. That is a live topic across Scotland right now. Although we all want to be enthusiastic about the potential of the under-22s bus pass, in many local authorities, school bus transport is being cut and, unfortunately, young people have been told that they cannot use their school bus passes on the service buses. Is there potential for more flexibility so that young people who want to and need to use the bus to get to school—for essential purposes—can do that, rather than, as for my young constituents, having to walk almost three miles on unsafe routes to get to secondary school?

Parents are now saying that they will have to start using the car to drive young people to school, which will cause more emissions and poor air quality. Given the levers that you have—including the Education (Scotland) Act 1980, which is older than me, believe it or not—and now that we have a potentially trailblazing young persons bus pass, is it not time to look at all that, to prevent people giving up on public transport and starting to car share using private cars when they do not want to do that? Are you willing to come and speak to some of those young people and their parents in Lanarkshire?

Jim Fairlie: This is one of the problems with being a new minister: you have just told me something that I did not know. If you can leave that with me, we will come back to you. Yes, I will be happy to come and meet your constituents.

Monica Lennon: That is wonderful. Thank you.

The Deputy Convener: If there are issues in that question that relate to the business of the committee as a whole, could the minister correspond with the committee? Of course, Monica Lennon can write to you in her capacity as a regional MSP.

Douglas Lumsden (North East Scotland) (Con): Minister, when I talk to bus companies, one of their big concerns is the erosion of the reimbursement rate for older and disabled persons. Over the past 14 years, it has gone from 73.6 per cent down to 55 per cent. Are there any unintended consequences of that rate being cut?

Jim Fairlie: No, because we are back to 80 per cent usage. There are also increases in the number of cardholders. There are an awful lot more cardholders, and that is reflected in the percentage. Bear in mind the fact that the bus company should be no better or worse off. There are more people using the scheme, so the rate is going down. If the situation gets to a tipping point, conversations will be had with bus operators to ensure that we can continue with the scheme.

Douglas Lumsden: Is there not a fear, though, when you say that bus operators have to be no

better or worse off, that the way they maintain their funding when the rate is cut is to increase the prices, which affects everyone else?

Jim Fairlie: Say that to me again.

Douglas Lumsden: Okay. If the rate is being cut and operators must not be left financially better or worse off, the way in which they will maintain their funding stream from the scheme is to increase fares, which impacts everyone else.

Jim Fairlie: Yes, but more people are using the bus. Operators' funding stream should not be dependent on Government support; it should be dependent on people using the buses. If the numbers of people have gone up—

Douglas Lumsden: I am sorry, minister, but I thought that the numbers had gone down.

The Deputy Convener: Can you let the minister respond, please?

Douglas Lumsden: Yes.

Jim Fairlie: No. If the numbers of people using the bus have gone up and the reimbursement rate has gone down, it balances itself out. If I am wrong on that, Bettina Sizeland will correct me—and I am happy to be corrected.

Bettina Sizeland: Reimbursement is based on the data and the modelling, which is why the rates change every year. We look at the patronage levels and the fare levels. The most important point is that we agree the reimbursement rates with industry each year, and they agree to those rates because they know that they will be left no better or worse off. The industry carries out shadow modelling, if you like. We then get together and look at the different factors involved to make sure not only that the operators are no better or worse off but that we are protecting the public purse.

Douglas Lumsden: Minister, I thought that you said that the patronage had gone down. That is why I am slightly confused.

Jim Fairlie: Gary McIntyre will highlight something for me.

Gary McIntyre: I will comment on the point about the lower reimbursement rate giving operators an incentive to raise commercial revenue from fare-paying passengers. The reimbursement rate is set in such a way that fare increases depress the reimbursement rate. It is a balancing act. There is not really an incentive for operators to increase commercial fares, because that would depress the reimbursement rate.

Douglas Lumsden: Sorry, but how does that work, Mr McIntyre? If the prices go up, the rate comes down?

Gary McIntyre: Yes, that is correct.

Douglas Lumsden: How does that work?

Gary McIntyre: The reimbursement rate modelling is a balancing act. It aims to reimburse operators for the revenue that they would have received from passengers were they paying fares, if the scheme did not exist, plus the additional costs that are incurred—

Douglas Lumsden: Some operators will increase their fares and others will not, yet the reimbursement rate is the same for everyone, so I am confused by that comment.

Gary McIntyre: A single reimbursement rate applies to all operators in Scotland. If fares were higher in the absence of the scheme, fewer people would be paying for the bus and taking bus journeys. The reimbursement rate is set to take account of that behaviour. If fares were higher in the absence of the scheme, fewer commercial journeys would have been made by those now concessionary passengers, so the reimbursement rate is depressed through the model.

We can share all the detail of the modelling to explain that in more detail to the committee if that would be helpful.

Douglas Lumsden: Yes, that would be—

The Deputy Convener: We have covered some of this already.

Mr McIntyre has offered to write to the committee with modelling details. Minister, whether you want to do that is at your discretion.

Jim Fairlie: We can do that.

Douglas Lumsden: My main concern is the unintended consequences. A lot of my constituents tell me that bus fares are increasing considerably. Is that happening because operators are trying to maintain the level of funding that they are getting, so if the reimbursement rate is going down, they need to have a different tool to ensure that the funding stays the same? As you said, they are to be left no better or worse off.

Jim Fairlie: If the running costs of bus companies go up, they will manage that as an operator. I am quite sure that their costs are going up, because the costs of fuel, electricity and everything else have gone through the roof, as you are well aware.

In 2006-07, there were 900,000 cardholders. In 2023-24, there were 1,618,128 cardholders. People are using the buses—they are getting on public transport—which was the purpose of the scheme in the first place.

I get that everybody is juggling finances, Mr Lumsden. Life is difficult right now—there is no

doubt about it—but the Government cannot allow rates to keep going up and up. Again, coming back to Mr Doris's point, we are trying to protect public funds as best we can while encouraging people on to buses. It is a balancing act. It is not easy; these things are tricky. We are doing the very best job that we can.

The Deputy Convener: This will be your final question, Mr Lumsden.

Douglas Lumsden: We are also trying to attract more people on to public transport—

Jim Fairlie: Yes, we are, which is why—

Douglas Lumsden: Can I just finish this point?

Jim Fairlie: Sorry. Yes, absolutely.

Douglas Lumsden: Obviously, the reimbursement rate is going down, so a way for operators to maintain the money that they are getting from the capped funding is to increase the fares. Will that not disincentivise people who are paying to use public transport, because their fares are increasing by so much?

Jim Fairlie: Bus companies will take commercial decisions on how much to increase their fares, and they will work out what the ratio is going to be.

On increasing the number of people who are getting on buses, we just talked about the fact that so many young people are now using buses. We are creating a habit of using this mode of transport for a generation, which will then go on to the next generation. We hope to continue that process, so that bus travel becomes an essential part of Scotland's ability to stay connected.

10:00

The Deputy Convener: Thanks. Jackie—

Jim Fairlie: Could Bettina Sizeland be allowed to make one final point, please?

The Deputy Convener: Sure.

Bettina Sizeland: With regard to the points that have just been made, it is a commercial, deregulated market, but the concessionary travel scheme is not the only scheme that supports patronage and passengers. We also have the network support grant, which goes directly to bus operators. We pay bus operators 14.4p per kilometre for every journey that they provide, and that payment is there to ensure that services and fares are kept at a reasonable level. There are other sources of support for operators to protect against the impact of operating costs and other factors that are outside their control.

Jackie Dunbar: I want to go back to what Bettina said earlier about the industry agreeing the

reimbursement rates. Did the industry raise any concerns on that, or was there total agreement?

Bettina Sizeland: There was total agreement. Concerns were raised about YPS and we agreed that we would do work with the industry this year on looking at the new YPS model and at the discount factor. We will also do more work on the discount factor that goes into the modelling for the older persons scheme, as well as for the YPS.

Jackie Dunbar: There were no concerns about either of those schemes?

Bettina Sizeland: The rates were agreed.

Jackie Dunbar: Okay, thank you.

The Deputy Convener: For the record, "YPS" is the young persons scheme.

Bob Doris: I was thinking about Ms Lennon saying that she was not yet born when the Education (Scotland) Act 1980 was enacted. Unfortunately, I was certainly born at that point, but I will gloss over that.

In my head, I hear the mantra of "no better off, no worse off", which we have heard a lot about today. The budget for 2024-25 is putting £370 million into concessionary fares for private bus companies. There is also the network support grant, which we have just heard about. There is massive investment from the public purse into private bus companies. That is important to put on the record.

Of course, it is incumbent upon us to ask whether that is the most effective way of using that money. Minister, if we could find a guaranteed way—without undermining the eligibility of the existing concessionary schemes—of using that quantum of cash more effectively to better run the Scottish bus network, would the Government give consideration to that?

Jim Fairlie: You will have to let me think about that question—it is out of left field.

The schemes that are in place now are doing the job that we are trying to get them to do. We are trying to get more people using public transport, we are trying to cut down on emission costs and we are trying to get that habit formed in the younger generation. Right now, with the schemes that we have put in place, we can see that the number of young people using public transport has increased.

I will give you some figures. More than 116 million free bus journeys have been made by under-22s in Scotland. That landmark policy is helping young people and families with children cut the costs of their everyday travel. There are now more than 700,000 cardholders. The scheme is working: it is getting people on buses and it is

saving them money. The Child Poverty Action Group has reported that free bus travel can save

“a total of £3,000 in the lifetime of a child in Scotland”.

It touches on poverty, it touches on emissions and it touches on the desire to get people using public transport. For all those reasons, the schemes that we currently have seem to be working. If you want to come up with a better scheme to use that quantum of money, I will be interested to look at it.

Bob Doris: I might just do that at some point in the future. I was not trying to throw you a curve ball; I could simply have asked whether exceptionally good use was being made of public funds, and I think that the answer to that would simply be yes, for all the reasons that you have just outlined.

The point that I was making is that, if such a massive investment of public money is going into the bus network without compromising any of the entitlements, there might be a more effective way to use the investment in the future. I think the minister has said that he is not closed to that, but he is currently wedded to the current system, as he should be.

Jim Fairlie: The fair fares review is looking into all the systems and agreements that we have in place; when it reports, we will have another discussion.

Bob Doris: That is helpful. I have a feeling that we will have a question about that shortly.

The Deputy Convener: In case there is anything that you want to elaborate on in response to what Mr Doris has asked you, minister, I remind you that you have already given an undertaking to write to the committee on a number of points following this evidence session. You can add to that if you wish.

Monica Lennon: That is a perfect segue, as I was wanting to ask for an update on the fair fares review. Minister, you said that we would have another discussion “when it reports”. Can you give an indication as to when that will be? How might the review impact on concessionary fares in the future?

Jim Fairlie: I think that the commitment was given back in December, and the publication will come out in the next couple of weeks.

Monica Lennon: In the next couple of weeks?

Jim Fairlie: In coming weeks.

Monica Lennon: Oh—in the coming weeks.

Jim Fairlie: Yes—let me rephrase that: in coming weeks.

Monica Lennon: Okay. Is that more than a couple of weeks?

Jim Fairlie: We will be able to tell you more when we get closer to publishing.

Monica Lennon: Okay. You can tell that we are very excited.

Jim Fairlie: Oh, I can tell that.

Monica Lennon: It is great that you are new in post, so you can look at things with fresh eyes, but, without telling us what the recommendations are likely to be, do you anticipate that those recommendations will be implemented before the end of the current parliamentary session, or are we talking about things that will happen further into the future?

Jim Fairlie: Once the review is done, we will be able to give you more detail.

Monica Lennon: Okay.

We have talked a lot today about the cap on the older and disabled persons scheme, and the reasons for it. We look forward to seeing some of the homework and modelling behind that. There has been a lot of discussion, both in Parliament and outside Parliament, about the ageing population and some of the challenges that we have with demographics. In your role with buses, are you protective of the current age limit, or do you think that it could be raised? Have you been involved in discussing that with officials or colleagues? Are you able to give any reassurance today that the qualifying age for the older persons bus pass will not be raised as long as you are connectivity minister?

Jim Fairlie: I will give you no commitments at the moment. I would have to come back to you with the details of that, because that is not something that I have looked at.

Monica Lennon: So, that is not a red line for you?

Jim Fairlie: I have not looked into it, to be absolutely honest, so you will just need to give me some time to get into the brief better.

Monica Lennon: Okay. I hope we have not worried lots of people that their bus pass could be under threat—but thank you.

The Deputy Convener: Minister, If I interpreted you correctly, you have stated that you will wait until the fair fares review is published, and the Government will comment on its considerations then.

Jim Fairlie: Yes. On the specific point about the age limit, that is not something that I have considered directly, so I will go and have a look at it.

The Deputy Convener: Perhaps we could have confirmation in your written correspondence.

Jim Fairlie: You are going to get a book back from me after this.

The Deputy Convener: That concludes our questions from committee members.

Agenda item 4 is a debate on the motion calling for the committee to recommend approval of the draft order. I remind the committee that only the minister and committee members may speak. This is a debate, not a question session, and I invite the minister to speak to and move the motion.

Minister, in case it is of assistance, you are entitled simply to move the motion.

Jim Fairlie: Yes, I was about to say that I do not think that I have anything to add to what we have already spoken about. I recommend that the draft order be approved.

Motion moved,

That the Net Zero, Energy and Transport Committee recommends that the National Bus Travel Concession Schemes (Miscellaneous Amendment) (Scotland) Order 2024 [draft] be approved.—[*Jim Fairlie*]

The Deputy Convener: I invite contributions to the debate from members.

Graham Simpson: I thank the minister and his officials for their time. It has been a very full session. The minister has probably had questions that he was not expecting, but that is a good thing.

I am comfortable to accept the motion that is before us, given that it has been agreed with industry. However, there were some answers during the session that concerned me, particularly in relation to the reimbursement rate. If fares go up, the rate might come down. If we get near the cap, it would come down to levels that we do not yet know. There is inherent unfairness in the way in which we are dealing with the two schemes, both of which are very positive. However, I do not want to extend the session any longer, so I note that I will be voting for the motion.

Bob Doris: I found your exchange with Mr Simpson helpful, minister, because it reminded me of the complexity that sits in the existing scheme. There has to be complexity to it, because we have to protect the public purse and we have to recognise that bus operators are valued partners, but they are commercial operators that will seek to maximise the yield that they can get for their business. I am pleased that they have come to an agreement with the Government.

It is important that, on the one occasion when the cap was exceeded, there was realpolitik and the bus companies and the Government got round the table to agree a way forward that was reasonable not just for the public purse but for the bus companies.

I am reassured by the modelling work and the data, particularly on the older persons scheme, which has been going for some time now. The data is very precise. What happened previously was that, when new technology was put on all the buses across Scotland, we realised that not as many journeys were taking place as we first thought were taking place. The technology gave us exact data and allowed the Government to have a much better negotiating position with bus companies at that point.

We are in a good place in which bus companies are valued partners in the scheme and with balanced discussion taking place with sophisticated modelling work. I am sure that the committee would welcome a briefing on how that works, because it is complex. Not all members get that at the first time of asking, so I think that the committee would appreciate that.

Underpinning this are the hugely valuable concessionary schemes for older persons and younger people. This is a massive investment from the Government into the private sector for a publicly deliverable bus system. I will certainly support the motion.

Monica Lennon: It has been a really good session. Thank you, minister, for your responses. I will support the motion, but I have a couple of points to make that I hope will be kept in mind.

We need to ensure that some flexibility is built in, particularly around the young persons travel scheme, because there are challenges not just in Central Scotland but across the country around school transport. It is about making sure that different systems can work together.

I am reassured to hear about the engagement with bus operators and with business, but I reiterate the point about the wider engagement that is needed with our communities. Those who already use the bus and those who want to use the bus face many barriers. We have talked before in the committee about bus deserts, which are areas across Scotland where people just cannot get a bus any longer, and that is a worry.

I appreciate the commitments that the minister has made today, particularly on engagement with MSPs such as me who have challenges in our areas at the moment. I will support the motion.

The Deputy Convener: As no other members wish to contribute to the debate, I invite the minister to sum up and respond.

Jim Fairlie: Thank you all very much for your input. I will definitely take on board a lot of the comments that have been made. As you know, I am new to the role, so there is stuff that I am learning as we go along. However, I give an absolute assurance that I am committed to

ensuring that Scotland delivers a world-class bus service that helps with all the things that I have spoken about in the debate.

The Deputy Convener: The question is, that motion S6M-11994, in the name of Fiona Hyslop, be agreed to.

Motion agreed to,

That the Net Zero, Energy and Transport Committee recommends that the National Bus Travel Concession Schemes (Miscellaneous Amendment) (Scotland) Order 2024 [draft] be approved.

The Deputy Convener: The committee will report on the outcome of the instrument in due course. In the convener's absence, I invite the committee to delegate authority to me to finalise the report for publication.

Members indicated agreement.

The Deputy Convener: I thank the minister and his officials. I briefly suspend the meeting before the next item.

10:15

Meeting suspended.

10:25

On resuming—

Environmental Governance

The Deputy Convener: Welcome back. Our next item of business is an evidence session with Environmental Standards Scotland. This will be a wide-ranging session that will touch on ESS's first annual report as a statutory body and other topical issues for ESS, as Scotland's new environmental watchdog.

Following on from our 16 January evidence session with environmental stakeholders, at which we discussed last year's Scottish Government report on that matter, we will also discuss ESS's views on environmental governance in Scotland in the post-Brexit landscape.

Joining us from Environmental Standards Scotland, I welcome Dr Richard Dixon, deputy chair, and Mark Roberts, chief executive. Thanks for attending the meeting; it is appreciated.

I note that Jim Martin has intimated his resignation as the chair of ESS. On behalf of the committee, I put on record our thanks to Jim Martin. We wish him all the best in his future endeavours.

Before we move to questions, I invite Dr Richard Dixon to make a brief opening statement.

Dr Richard Dixon (Environmental Standards Scotland): Thank you for inviting us. I am the deputy chair, but when Jim Martin steps down at the end of the month, I will become the acting chair. I will do that until the public appointments process has produced a new chair. That process involves a candidate appearing in front of the committee for its approval.

Before I talk about our impressions of the Scottish Government's review of environmental governance, I will say a bit about recent progress in Environmental Standards Scotland. We are now two-and-a-half years old. We are no longer a new organisation; we are a young one. During the past six months, as summarised in the letter from our chair to the committee, we have produced five informal resolutions with public bodies. The informal resolution is our first approach to a problem. When someone comes to us with a problem or when we think there is a problem, dialogue with a public body or set of public bodies is the first way that we try to fix that problem. The resolutions that we have produced in the past six months have ranged from how official bathing waters are recognised in Scotland to getting a proper assessment of the Government's infrastructure investment plans as they relate to climate change targets.

In December, we laid in Parliament an improvement report. It was the second improvement report that we have produced, and it relates to local authorities' climate change duties. We raised a number of issues with the Scottish Government, and we were able to come to resolutions on almost all of them. There was very good dialogue and good progress has been made. However, on one issue we could not make progress. That was on the issue of local authorities reporting on their wider emissions—their scope 3 emissions. In some cases, including those scope 3 emissions could quadruple the emissions that local authorities would report. That is what East Renfrewshire Council found when it did that exercise. We are talking to the Scottish Government about what it is going to do, and it will formally respond to us by the end of May.

Last month, we published a research report on air quality, which focused on particulate matter and the new guidelines that have come from the World Health Organization. The European Union is agreeing new standards on particulate matter and also on nitrogen dioxide, and to honour the Scottish Government's commitment to keep pace with environmental developments in Europe, it is very likely that change will be needed. We are discussing that report with the Scottish Government, and we expect to see a formal response from it in due course.

With regard to the Scottish Government's review of environmental governance, which the committee discussed at its evidence session on 16 January, the Government was pretty positive about ESS, which we were pleased to hear. However, we also noted that it is quite early in our existence to come to a fixed view about both how we are doing and whether we are filling all of the gaps that leaving the European Union has left.

10:30

Overall, we felt that the review missed the opportunity to look in a systemic way at the outstanding accountability gaps and particularly to look at monitoring and reporting duties. A lot of data had to be reported to the European Union or the European Environment Agency, but it is not clear whether, or how, some of that data will be collected now, in the post-Brexit world. That is where we are with monitoring and reporting.

Another weakness that we felt was that, although the report acknowledged that there was a problem with access to environmental decision making and justice in terms of our compliance with the Aarhus convention on access to justice, it really only talked about one of the two problems. The report talked about the problem of cost and proposed a number of measures that might address that, although it is not entirely clear that

the measures will address that cost problem. It is very costly for a community or an individual to go to judicial review and there are some measures that might make that cheaper.

The report did not address the problem of merits-based reviews, which is a matter of live discussion at the Aarhus compliance committee. A judicial review of a decision made in Scotland will look almost entirely at the process and at whether that process was followed correctly. It will not look at substantive issues, such as whether somewhere is actually the right place for a landfill site. The Aarhus convention says that every nation that is a signatory should provide for its citizens a process that is able to look at both the process by which the decision that they want to challenge was made and the substance of that decision. That is missing in Scotland at the moment, but the Government's consultation did not really touch on that at all.

Finally, on the issue of environmental courts, we felt that there should have been a far more robust examination of whether environmental courts would make progress towards environmental justice in Scotland. I have just said that there is a problem: an environmental court might be the answer to that problem. Instead, the consultation brushed the issue off entirely and said that there was no need for such a court, without presenting any evidence. Very late in the process, a briefing paper was published containing some of the reasoning that supposedly went into that decision. ESS considers that to be unfinished business. There should be a much fuller discussion of having an environmental court or tribunal, of how that would work and what it would achieve, of where it would fit into the whole system and of how it would relate to ESS's functions.

Deputy convener, thank you for your kind words about Jim Martin. I also pay tribute to his time as chair. He led a new board to create the organisation from nothing, during Covid, which was quite some trick, and has guided us through the process of getting to vesting, creating and building a staff team and becoming the successful organisation that I think that we are.

The Deputy Convener: That was a helpful introduction and I absolutely endorse what you said about Mr Martin.

ESS published its first annual report and accounts in October 2023. Building on what you have said, can you summarise your main achievements and the impacts of the interventions that you have undertaken? Perhaps most importantly, what have been the key challenges for the organisation and how are you considering those as you look ahead?

Dr Dixon: Mark Roberts might want to list our achievements and I will come back in to talk about the coming challenges.

Mark Roberts (Environmental Standards Scotland): As Dr Dixon said, we have moved from being a new organisation to becoming a young one. One key element of doing that has been building up our staff team. When we vested, on 1 October 2021, ESS was a team of 10 people. We are now a team of 23, so one of our big successes has been attracting and recruiting a really diverse and talented team.

We have started seeing the conclusions of some of the informal resolutions that we have undertaken. As Dr Dixon mentioned, we have completed two improvement reports, one in relation to air quality and nitrogen dioxide targets and one about local authority climate change duties.

We published our first strategic plan, which set the scene for what we were doing and was approved by the Parliament at the end of 2022. Some of the priority areas that we identified within that were based on extensive baseline evidence reviews that we undertook by way of preparation. That gave us a broad overview of some of the issues in different environmental sectors and it allowed us to set our priorities for analytical and monitoring work during the strategic plan period. That was another key success in enabling us to say that, although we have a broad remit that covers the whole scope of environmental law, we will prioritise the following issues.

We have launched our first investigations, so we are working through the processes to get to grips with how they will work. We have also started to establish ourselves as a new public body within the environmental governance landscape.

It is worth putting on the record that the situation now is very different to how it was before Brexit. Prior to the United Kingdom's exit from the European Union, the Commission had oversight of the implementation of environmental law, and the focus was on the member state level. Environmental Standards Scotland is much more immediately accessible to the public and communities here. We are able to respond relatively quickly in comparison to the European Commission and that makes a real difference to the public bodies—the Scottish Government, the Scottish Environment Protection Agency, NatureScot and local authorities—that we are dealing with.

ESS is going through the process of establishing itself. To be candid, although we are some of the way there with those public bodies and how things are going to work post-Brexit, the process is on-going. The fact that we have

established ourselves as a new body within the wider landscape of environmental governance is an important achievement, however.

I will pause there and let Richard Dixon enumerate some of the challenges that we will face in future.

Dr Dixon: On our internal processes, I will be acting chair, so there is the challenge of recruiting a new chair. Some of our board members will come to the end of their first term at the end of March next year, so it is time to think about who will put themselves forward to be considered to continue and what skills we need to look for in new board members. We are already beginning the internal discussion about the next strategic plan, and we hope that the Parliament will sign that off towards the end of next year, so there is a job to be done to get that running.

I will mention two external challenges. One is the public finance climate. What I mean by that is that our job is to tell public bodies when we think that they are not implementing a piece of legislation correctly and to offer to have a talk with them to see if we can resolve that. As public finances become more difficult, we might find that a public body will turn around and say to us that it would love to do that, but it has all these other statutory duties that it cannot afford and the environment looks like a bit of a luxury, so it cannot do that. I hope that we never get into that situation, but that is a danger that we might head towards.

The challenge for us is that we must be pure. We must have sympathy for the public sector and the difficulties that it faces—we are part of the public sector after all—but we must not blunt our resolve. Our job is to say that this piece of legislation says that this must be done, so let us talk about how to get it done.

If that becomes a problem and if we cannot, in dialogue or through our enforcement mechanisms, make the right thing happen on the environment, then it becomes a political decision about resources for the Parliament and the Scottish Government and about how, when resources are scarce, we deliver best for Scotland on all the obligations that our public bodies have, including those that we will be pushing. I hope that we do not see that challenge materialise, but it could and it is on our minds.

The other challenge that I will mention is keeping pace with the European Union. Things move very quickly in Europe. I have already mentioned that the EU is adopting new air quality targets. It has also just agreed to amend a directive to introduce something like an ecocide crime—Monica Lennon is very interested in that issue. Member states have two years to

implement that. If Scotland is aiming to keep pace, we should be looking at what that means.

However, it is a big field to keep an eye on. One of our challenges is to keep up with what is coming in Europe—not only what has just been published, but what will come down the track in nine months' or two years' time. We have set up an international advisory group to help us to do that. A member of our board works for the European Commission, so we have some good intelligence, but it is still a big field. Conversations about how we keep pace and which emerging matters we need to keep an eye on will no doubt come to this committee, but we also have such discussions with cabinet secretaries. Those are the two big external challenges that I see.

The Deputy Convener: Thank you, both. It was helpful to hear you list the significant achievements and highlight the important considerations and challenges for the future.

Graham Simpson now has a few questions on your reporting documentation.

Graham Simpson: Before I get into those, Dr Dixon, I note that, at the start of your remarks, you mentioned that you had an issue with councils reporting on wider emissions, which you said fell under scope 3. Will you explain that a bit more?

Dr Dixon: Councils, householders and businesses have direct emissions—for example, they buy coal or oil and they use electricity—and they can account quite easily for the carbon consequences of those choices. However, they also buy stuff that they use in their businesses—for example, the national health service does a lot of that—and businesses will contract people to carry out services for them, which will have some carbon consequences.

Scope 3 is all about looking at the wider impact of those aspects, and a large part of it is about procurement. Many local authorities already consider some of those aspects. For instance, when we were establishing our environmental strategy, we decided that, in counting our carbon emissions, we would include those of staff commuting to the office. Many organisations count only business travel, but we include commuting, too. The issue, therefore, is how widely that boundary is drawn. The more widely a public body draws it, the clearer an idea it will have of its real impact and, therefore, where the big hitters are and where the big bits of carbon are that it might do something about.

Graham Simpson: So, is the issue how widely you draw that boundary?

Dr Dixon: Yes. Most local authorities currently draw it quite narrowly. East Renfrewshire Council did an exercise in which it considered procurement

and got a much bigger number—in fact, four times bigger than it would have done by looking at the narrow boundary. That is the scale of what is currently being ignored. It probably adds three times more to people's emissions.

As the committee will know, there is in Scotland a public duty to report on emissions relating to procurement. In the last reporting round that I looked at, which was for 2021-22, 17 public bodies, plus East Renfrewshire Council, had done it. Lots of companies are considering it, too. However, when we suggested that that sort of thing should be required of local authorities, the Scottish Government was reluctant and said that the methodologies were in development.

At the moment, East Renfrewshire's numbers are quite crude on the impact aspect. They would help it to determine whether, for example, the actions of a transport service provider formed a large part of its carbon footprint and whether it should, therefore, do something about that. However, because the results are crude, East Renfrewshire's objection was that we would be asking people to do something that produced numbers that were perhaps hard to interpret.

Of course, if the Government proceeds, the timescale will be quite long. The guidance suggesting that local authorities must report will not come out until 2025, so it will probably be 2026 before they start to do so. Therefore, there will be two and a half years in which to work on an appropriate methodology that all authorities can share in order to produce numbers that are at least quite meaningful. If we wait until we have the perfect methodology, we will never do this, so now is the time to say, "Right—let's get on and do the best we can in the current circumstances."

Graham Simpson: Have you spoken to the Convention of Scottish Local Authorities about it?

Dr Dixon: Yes, we have. Indeed, the committee will have seen that COSLA has written a letter in response to our improvement report. It is a generally helpful letter with regard to how it would need to do things and the resources that it might need, but it is quite negative about scope 3, and it takes the Government line that, because the methodology is not sufficiently developed for it to be meaningful, it is a waste of resources to do it. We do not agree. The point about the timescale in particular means that if we all agreed today to do this work, no local authority would actually do it until 2026, which gives us plenty of time to work together to get the best methodology that we can. The fact that lots of authorities would be doing it—and that, perhaps, it would happen more widely in the public sector—means that the costs might come down, because we would get a good deal from a consultancy or an academic unit that would do the work for everybody.

10:45

Graham Simpson: I read the letter that Jim Martin sent just a few days ago, in which he said that since you

“began operating on 1 October 2021”,

you

“have received a total of 45 representations”.

That does not sound like an awful lot to me. Would you accept that that is not many representations in that period?

Dr Dixon: Representations can take quite a long time to deal with. In relation to our workload, that is a fair amount, but we do lots of other things, too. The first improvement report came out of an investigation into air quality that we, as an organisation, decided that we should do. No one said to us, “This is a problem. Please have a look at it”; instead, we decided, “This is obviously a problem, so let’s have a look at it.”

We might start investigations on our own initiative. Some reports, such as the one that I mentioned on particulate matter, are research reports that look at the state of play; another of that kind of state-of-play assessment report, on sewage in waterways, is coming, and that, again, might lead to some kind of enforcement action or an investigation of certain aspects. We do a lot of things that are not just about the stuff that people bring to us, but, even when people do so, some can, as the Environmental Rights Centre for Scotland complained to you, take quite a while for us to work through, because there are a lot of things to talk about.

In that context, I want to mention a frustration that I have, which is with section 40 of the continuity act, on confidentiality of correspondence. When we ask a local authority or another public body for information, or when we use the formal power of an information notice, we are not allowed to disclose the information that they have given us, or to share that notice. One of our values is transparency—we want to be transparent and accountable—but if a person makes a representation to us on a problem with a public body, we might have a very lively correspondence and lots of conversations with that body, but we cannot tell the person who made the representation about the content of that discussion or, potentially, that we are even having that discussion. The process will become transparent again when we write something up, because we will say, “Well, we discussed and agreed this with the public body, and this is the action that is going to happen.”

However, there is that period, which could last some months, in which very lively activity could be happening internally between ESS and public

bodies, but we cannot tell the person who made the representation that it happened. That is one of my frustrations with the process. When we get a representation, things might appear to go rather quiet, when, actually, a lot is happening.

Graham Simpson: That seems pretty restrictive and frustrating.

Dr Dixon: It is well motivated. The idea is that, if all is confidential, the public body will respond to us much more frankly about why something is going wrong. When they know that that information will never end up in the public domain, they will tell us things that they might not tell us if it were to go on record—although it would all, of course, be subject to freedom of information requests. That is the motivation, but it is quite a backward, non-transparent way of doing things, and it has been one of my frustrations.

The Deputy Convener: Are you talking about the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021?

Dr Dixon: Yes. Section 40 of that act is the one about confidentiality of information.

The Deputy Convener: Thank you for that clarification.

Dr Dixon: Mark Roberts, do you want to say a bit more about whether 45 is a good or bad number of representations?

Graham Simpson: Before you do so, Mark, I just want to make an observation—and it is not a criticism, just an observation. I do not know whether 45 is a good number, but, if not, it might just be because you are new and people do not know about you. Perhaps a challenge there is for you to get yourself known better.

Dr Dixon: That is certainly part of what we are doing, and Mark Roberts can say more about that in a moment.

I would just say that, in your session on 16 January, Bridget Marshall from SEPA said that her organisation is dealing with a lot more things now, because people are either going to SEPA with an issue that is then referred to us or are bringing us an issue that we then engage on with SEPA. Before Brexit, people might have taken a complaint to Europe and something might have eventually happened three years later. Now, things are being dealt with much more rapidly and more stuff is happening. We should be pleased that people are able to raise their concerns in a way that they were not able to before Brexit, and, although some of the issues take some time to deal with, there is a clear process and some legislative teeth to help resolve things.

Mark Roberts: As for whether 45 is a good or bad number of representations, I agree with the

point that has been made. I am not sure whether there is a right number that we might expect by this stage. To put the situation in context, I would point out that the number of inquiries from members of the public, communities, non-governmental organisations and so on that come to us has almost doubled, and we have directed some of them to other organisations that are more appropriately placed to deal with them. We also work with people who come to us with issues and help them develop and shape their representations.

On your observation that people perhaps do not know who we are and what we are about, we are keen to work on that and to try to raise our profile. That will come with time. As we have said, we are now two-and-a-half years old, and we need to continue that effort and renew what we are doing in that regard. We are undertaking a programme of community engagement to reach out to different groups, raise our profile and set out who we are, what we do and do not do, and how people can come to us. As Richard Dixon said in his opening statement, we are a young organisation, and we are still developing ways of ensuring a wider understanding of our role.

Graham Simpson: Of course, members of the public might not know the difference between Environmental Standards Scotland and SEPA, or understand which organisation does what.

Mark Roberts: That comes back to the fact that the wider environmental governance landscape is quite a complicated and confusing picture for members of the public, and all public bodies in the area need to ensure that there is clear messaging about their respective roles.

Graham Simpson: There are lots of questions to get through today, but I would like to ask one more before I finish. Are you seeing any early trends in the kind of issues that are coming up?

Mark Roberts: Obviously, we look at lots of individual cases and we are doing analytical and monitoring work to sift through some of those priority cases. We are starting to think about the themes that span multiple cases and areas. It is an active subject for discussion inside the organisation.

One of the key issues that we are seeing in a number of places is the availability, accessibility and transparency of data. That relates to the wider question of environmental governance, as you need accessible data to assess performance and realise accountability. That is probably something that we will comment on more generally at some point in the future, once we have more evidence to support our position on it.

Graham Simpson: I have other questions, deputy convener, but I know that other members want to come in.

The Deputy Convener: Do colleagues have any further questions on the strategic plan, the annual report and the six-month updates?

Graham Simpson: I have some further questions.

The Deputy Convener: Are they on this area?

Graham Simpson: No—they are on different areas.

The Deputy Convener: If colleagues are content, we will move on to the area of environmental governance and the review.

As you will be aware, concerns have been raised by stakeholders about how the Scottish Government approached the 2023 environmental governance review, and you said in your response that the review was too narrow. I appreciate that you touched on the issue in your opening statement and first answer, but what was missing from the review and why have you described it as a missed opportunity? Have you had discussions with the Scottish Government about potential next steps? If so, how are those discussions going?

Dr Dixon: The Scottish Government interpreted the 2021 act's requirement on what it needs to look at very narrowly, looking largely at whether ESS was filling the gaps left by the UK leaving the European Union. It was asked to look specifically at an environmental court, but it did not look at the overall picture of environmental governance in Scotland, how SEPA interacts with NatureScot, whether the SSSI regime is working, or the wider picture of governance and how everything fits together. It had a very narrow scope in what it looked at, which was disappointing. Although it acknowledged that there was a problem with compliance with the Aarhus convention, as I have said, it looked at only a very narrow part of that and said, "Here are some things we're doing—it will probably be all right", in what seemed to me a rather unconvincing way.

There is an international convention—not a European convention, but an international convention that goes beyond Europe—that we are signed up to and which we say that we are serious about. We have persistently been told that we are not complying with it on the cost issue and there is a live discussion about the substantive review issue, yet the consultation did not take the latter seriously at all, and I do not think that it took the former particularly seriously, either.

As for an environmental court, if we think about the Aarhus problem as one in which a community does not like something that happens and wants to challenge the decision, there might be an

appeal process for it to go through, but after that, its only option, given that it cannot go to Europe any more, is judicial review, which leads to severe problems in relation to dealing with the issues that communities want to be dealt with and whether they can possibly afford it. As you heard in the previous evidence session on this matter, a day in court for a judicial review might cost a community or an individual £30,000 to £40,000, and if they are landed with someone else's costs, the total bill might be £100,000. It is therefore pretty hard for an ordinary individual to go down that route, unless they are going to mortgage their house.

There is definitely a problem with access to justice, and an environmental court—a well-constituted, well-designed and well-run environmental court—might be the obvious answer to fix it. You heard some enthusiasm for an environmental court during your evidence session in January, but we do not think that the Scottish Government looked at the idea seriously at all. It just dismissed it and then came up with a briefing very late in the day, which was partly cobbled together from Wikipedia and from material that it produced in 2017. You might wish to ask the cabinet secretary, when she appears in front of you, whether the Government is going to look at that a bit more seriously. As I said at the start, it seems to us to be a piece of unfinished business that the Government really needs to return to, because it might be a way of solving the very big problem of access to environmental justice in Scotland for communities and individuals.

Mark Roberts: You asked about next steps and what the Scottish Government is going to do. My understanding—and, indeed, the review was framed in these terms—is that environmental governance is very relevant to the human rights bill that the Scottish Government is developing, as it might contain a right to a healthy environment. I think that the Scottish Government is bearing in mind how the two things are going to interact. In its response to the consultation on the review of environmental governance, it is cognisant of wider developments in environmental governance, and a right to a healthy environment is being considered and worked through in Government. We are actively involved in engaging with the Government on that, as it could fall within our remit in future, and if that were to be the case, it would represent a significant shift in and expansion of environmental law.

The Deputy Convener: In that space, one of the governance gaps that you cite is on monitoring and reporting on the state of the environment. By comparison, part of the role of the Office for Environmental Protection is to assess the UK Government's progress against the environmental targets and goals in its environmental improvement plan. Could or should Scotland

consider such an approach as part of the overarching monitoring that ESS undertakes?

11:00

Mark Roberts: Yes. As I said in response to Graham Simpson, making sure that environmental data is available, accessible and subject to effective scrutiny and monitoring is a really important element. Prior to Brexit, some of that function was provided by the European Environment Agency, and it is reasonably widely recognised that that is part of the governance gap that has not been filled following the UK's exit from the EU. In our response to the review of environmental governance, we identified that as a gap, and it probably ought to have been addressed during that review. If that data were presented and subject to scrutiny in a more coherent way, it would give the Parliament and the public a much better understanding of the overall state of the environment.

You referred to our partner organisation in England and Northern Ireland, the Office for Environmental Protection, which has a duty to comment annually on progress against the UK Government's 25-year environmental improvement plan. We do not have that duty in our legislation but, where we carry out individual pieces of monitoring and analysis work, we look at what data exists and will report on progress against it. We do that against the priorities that we have identified, instead of doing what our colleagues in the OEP do, which is an annual state-of-the-nation stocktake of progress against all environmental targets. That is a subtle difference in the ways in which the two organisations have been established.

The Deputy Convener: Thank you—that was interesting.

Mark Ruskell has a question in this area.

Mark Ruskell: I want to ask about the line between the individual cases—or multiple instances of a case—that are presented to you and the work that you do to look for systemic change and analysis of issues. Richard Dixon said earlier that there is evidence that SEPA is taking on more individual cases now, and we have certainly heard that that is the case. I am not entirely clear whether that is a result of increased awareness of the existence of ESS or referrals or whatever but, if the bodies that are primarily responsible for individual cases are picking up more casework, how is that starting to influence the themes and topics on which you then look to do further investigation, with a view to addressing what might be underlying systemic issues? It feels as if there is a bit of an interplay and a bit of a grey line between the two.

Dr Dixon: As Mark Ruskell will remember well, during the passage of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, there was a lively discussion about whether ESS should be responsible for individual cases or whether they should be excluded, which is how we ended up.

The Scottish Government view was that there are already appeal mechanisms, so if someone does not like something about a regulatory, licensing or planning decision, there is somewhere for them to go to appeal and that ESS should not be set up as a parallel appeals body.

Others said that, if someone had gone through that process and was still dissatisfied, before Brexit they could have taken their individual case to the European Commission, which might or might not have done something for them. If ESS is there to replace the functions of the European Union and European Commission, there is a gap.

As we have discussed, Scotland is not complying with the Aarhus convention, so there is a problem with access to justice. That means that, if you have an individual case, you probably do not have anywhere to go, because you cannot afford judicial review, which might not look at the issue in the way that you want, anyway.

When individual cases are brought to us by members of the public and organisations, we always consider whether those cases illustrate a systemic failure. If someone complains about sewage from a sewage treatment works in their river, is that a one-off that we are not allowed to look at or potentially a systemic failure because planning, guidance or law is not working to protect them and other people? We always think about that.

For example, we looked at the systemic issues when someone brought us a case involving the Conservation (Natural Habitats, &c) Regulations 1994 and the requirement to do an assessment. The case that was brought to us was about beaver translocation. Someone suggested that NatureScot had not looked properly at the impact on other species and had not done the correct assessment of the translocation proposal. Legislation forbids us from acting directly on an individual case, but we looked at the assessment regime under the habitats regulations, discussed it with NatureScot, and agreed improvements to the guidelines that it uses to implement the assessment regime. An individual case was brought to us that we could not help with on the spot in any meaningful way, but it led to a systemic change. That means that that kind of case will probably not come to us again, as the issue has been fixed. Being restricted in respect of individual cases might be a limitation, but we have made the best of it by always looking for a systemic angle on things.

The wider picture is that we need to fix the access to justice problem in the whole system. Looking at that and fixing it may or may not involve an environmental court or tribunal. When we fix that problem, that will help us to define the role of ESS in relation to individual cases and whether we need to take them on, or whether the system is now working so that we do not need to do that but can look just at systemic issues.

Mark Ruskell: So, at the moment, there is a missing bit of the jigsaw puzzle. Currently, individuals come to you with individual issues. It sounds as if you need to screen those and work out whether a systemic issue underlies them. Do multiple individuals and organisations combine similar complaints that maybe point to a systemic issue? Do you discuss with SEPA and other organisations the volume of their individual complaints so that they can say to you that they have a problem with noise monitoring, environmental assessment or whatever, as they have had 30 complaints on that subject, and ask whether you are aware of that? I am interested in what that conversation looks like.

Mark Roberts: You asked specifically about SEPA having an increasing number of complaints. I think that that is partly a reflection of how the new system is working. We always take the line that anyone who comes to us has had to go through the standard complaints process with the public body that they are concerned about. A well-established principle in complaints handling is that the complaint is best dealt with as close to the source as possible. I think that SEPA is now seeing an increasing number of complaints and that sort of thing, with individuals or organisations knowing that they need to have exhausted that approach before they can come to ESS. I think that SEPA referred to that in January as one of the almost unintended consequences of how the legislation is working. That is part of settling into the new way of operating for us all.

On individual cases and their relationship with wider systemic issues, we will, as Richard Dixon said, always look to see whether an individual case, as presented to us, gives any indication that there is a wider issue. A time factor is also involved. As we build experience and as a greater range of individuals and organisations come to us, we will build up intelligence about certain systemic issues.

I do not wish to repeat myself, but we see the issue of data accessibility, transparency and availability in lots of places. It is a significant, overarching issue. We may all see multiple cases. You gave the example of noise. We are not yet seeing lots of representations coming to us about how noise legislation is being implemented. However, we might be led to say, "There must be

a systemic issue" if we see such representations from lots of parts of the country.

The Deputy Convener: Bob Doris, do you have any questions?

Bob Doris: I think that my question was in part answered in the exchange with Mark Ruskell. Dr Dixon talked about SEPA getting more traffic, whether that is ESS having to discuss matters that are being raised directly with it or more complaints going to SEPA as a way of getting access to ESS. There was a question about whether SEPA is suitably resourced, given the greater scrutiny role that it now has. How are ESS's relationships developing with not just SEPA, but other public bodies? Do you have any concerns about the resourcing of those organisations and how those relationships are going?

Mark Roberts: We regularly meet the bodies with which we engage and work on scrutiny. That happens at a variety of levels. For example, I am meeting the chief executive of SEPA this afternoon. My team also regularly meets the relevant teams, such as those for water quality or air quality. We engage regularly with a range of teams within the Scottish Government, which reflects the breadth of our remit—all the way from biodiversity through climate change to air quality, for instance.

There has been and continues to be regular engagement. There is always an inherent tension in the relationship between any scrutiny body and the bodies that it scrutinises. That is real, but I am clear that you have to engage regularly to understand the body that you are scrutinising, so that is really important.

On the finances, Dr Dixon referred to the longer-term concern about the pressures on the public finances and whether those will mean a squeeze in what public bodies are able to do on environmental protection and improvement. I do not think that that is the case. Certainly, the budget that the Parliament has agreed for next year for SEPA and NatureScot had real-terms increases, if I am correct. However, like every other public body, those bodies will be under pressure in the future and there is a concern that that might reduce their ability to cover as many things as they currently do. My observation—it is only an observation; we have not done any work on it—is that the pressures on environmental services responsibilities will probably be particularly acute for local authorities.

Bob Doris: Yes, it is important that you put that on the record, so thank you for doing that.

Dr Dixon and Mr Roberts will understand that these questions come from previous evidence that we have heard in relation to the matter.

Some witnesses have suggested that ESS has not quite got into the swing of using its full range of enforcement powers. Informal agreements can be better sometimes, but ESS has a range of enforcement powers and questions have been raised about whether there is sufficient expertise as yet within this young organisation, as both witnesses have put it, and whether ESS is fully resourced. This is your opportunity to respond to some of those comments.

Mark Roberts: If we had more resources, we would always do more. That is a statement of fact.

On our approach to enforcement, our strategic plan is clear that our first port of call will always be to try to resolve things informally through dialogue and discussion. It is important to recognise that that is a part of our regulatory toolkit and that we would like to do that.

We have issued improvement reports in two cases, as we mentioned, on air quality and on climate change duties for local authorities. The reports require a response from the bodies involved that the Parliament and, in all likelihood, this committee will have to scrutinise. That is an additional level in us trying to use our enforcement powers.

11:15

The other two elements to our enforcement powers are compliance notices and our ability to petition for judicial review. We have not used those powers to date. Our strategic plan sets out quite high bars that apply to our use of those powers. We retain budget that would allow us to take a judicial review if we deemed it necessary; that decision would be for our board to take.

You asked about the resourcing of expertise. An in-house lawyer joined us last year and we retain budget for the commissioning of external legal advice. I therefore have no concerns about the legal resources that are available should we deem their use necessary. However, I stress that I expect the overwhelming majority of the cases that we deal with to be resolved through informal resolution. In the longer history of ESS, as we move from being a young organisation to a more mature organisation, I expect that there may be the odd case in which we go to some of the more stringent enforcement tools.

Bob Doris: The point that the use of enforcement powers is not necessarily a sign of success was well made. There are other ways to get the outcomes that ESS is looking for. That was interesting to hear. However, you also talked about the very high bar that applies before some of those powers can be used. I put my hands up: I have no idea whether it is appropriate that the bar is set so high. Is it set at a reasonable level for

ESS, or are you still taking into account that you are bedding in as an organisation before you can determine that?

Mark Roberts: We have set those criteria on things such as the seriousness of a breach of environmental law or a risk of serious environmental harm. We have criteria for ourselves on what would constitute a serious breach or serious environmental harm. With experience, we will have to keep that under review. Over the next 18 months, as Dr Dixon mentioned, we will review our strategic plan for the forthcoming period. The learning from the first three years of ESS's existence will play into deciding whether that was pitched right.

Dr Dixon: The improvement report that we produced on local authorities' duties to report on climate change is a good example. Someone had raised the issue as a representation, saying to us that they did not think that the system was working effectively—that it was not really making a difference to what local authorities did, nor to their emissions overall, and that it was a mixed picture, in that some authorities were doing great but some were not doing anything much.

We investigated that and came up with, I think, five recommendations that we wanted to discuss with the Government. We had quite a long discussion and made a lot of progress. On four of the recommendations, we came to an agreement that was entirely satisfactory to us. However, on the fifth—the issue of scope 3 emissions and whether local authorities should be mandated to look at those—we could not agree. There was a long discussion and an understanding of positions on both sides, but we did not agree. That ended up as an improvement report, which is another thing that has a high bar. The issue reached that high bar of saying that the way to make progress was to produce an improvement report.

The report acknowledged, very fairly, that we had come to an agreement on all of the first four issues, that things would change and that that was satisfactory—although, of course, we would monitor what changes occurred. However, it also said that, as we could not agree on the final issue, we had produced an improvement report to compel the Government to come back and say what it was going to do about the issue and whether it would do what we said. That will come in front of you, and you can judge whether what the Government has said is fair and reasonable.

Bob Doris: That is very helpful. Thank you.

The Deputy Convener: Monica Lennon has a supplementary question on whether you have sufficient technical expertise to fulfil your statutory role and complete work at sufficient pace.

Monica Lennon: I have a brief supplementary on the point about judicial review. We heard today about the prohibitive cost of judicial review to not just communities but organisations. To follow up on what Mark Roberts said to Bob Doris, how much budget is set aside for judicial review and other legal costs? Is there a cap on that? You talked about your strategic plan, but it would be helpful to give some indication of how much is set aside for those purposes.

Mark Roberts: We protect £100,000 a year for that.

Monica Lennon: You protect £100,000. When Dr Dixon said earlier that communities might face a bill of around £30,000 to £40,000 for bringing a judicial review, that seemed to me to be the lower end of the scale. In my region, communities have been advised previously that the cost would range from £50,000 to £100,000, so maybe you have access to good-value lawyers. How many cases could that money fund? Would it be two or three cases at the most?

Mark Roberts: That would definitely be the most. I agree with your numbers; that sum might even fund only one case.

Monica Lennon: Maybe the word “cap” is not the right word to use. In reality, there could be one case a year, so if a few cases were in front of you, you would have to choose which was the most serious.

Mark Roberts: I do not see it as a cap. If we ended up in the very unusual situation of having multiple cases at the same time, we would look elsewhere in our budget and at other things that we would have to pare back—if we decided that judicial review was the most important thing to do.

Over the past decade, there have been very few judicial review cases in the environmental space—there are not that many historical examples to draw on—which, of course, may reflect the fact that it is very expensive to do. However, we protect that amount of money. In the unlikely circumstance that we had to take on more cases and bring more judicial reviews, we would raise concerns about our overall resourcing with the Parliament.

The Deputy Convener: That moves us on nicely to the next area of consideration: compliance with the Aarhus convention and calls for an environmental court to enable better access to environmental justice. Graham Simpson will open for us on that theme.

Graham Simpson: I have read your response to the Scottish Government's consultation on its “Report into the Effectiveness of Governance Arrangements”—that is a bit of a mouthful. You say that

“Scotland has been found to be in breach of the Aarhus Convention in ten consecutive findings since 2014”.

That seems like a pretty poor record to me. What are the consequences of that for the Scottish Government?

Dr Dixon: There are no real consequences except public shame. There is an Aarhus convention compliance committee, which meets every year and considers the cases in front of it. For quite a number of years, it has continued to say that Scotland—and, indeed, the UK—is out of compliance because the route to remedy is too expensive.

Some things have changed, so the position is better than it was, but the scale of costs that Monica Lennon and I discussed is still prohibitive for most individuals or community groups. The risk of having to pay other people's costs means that, even if you can afford to go to court, you might not be able to afford to finish it off—or it might finish you off. So—

Graham Simpson: I will stop you there. From a Government point of view, there are no consequences other than a slap on the wrist from a committee, and it is too expensive for ordinary individuals to go to court. Why not leave things as they are? That seems to be the Government's stance.

Dr Dixon: To be fair, in its report and in the consultation on it, the Government acknowledged the compliance committee's judgments and that there is a problem. The Government has proposed a number of things—six, I think—that it is doing that might or might not make a difference.

I am not sure that many people in the sector are convinced that those things will make enough of a difference. Reducing or even abolishing court fees makes a small difference, but that is not the big cost in going to judicial review. So, there are some things that might make a small difference, but probably will probably not fix the issue. However, the Government ignored the issue about having a substantive review, rather than just looking at the process. It used the fact that not many cases have gone to judicial review as part of its argument for not needing an environmental court, because there did not appear to be demand. However, if what is stopping demand is the shockingly high cost and the risk of facing a huge bill at the end of it, it is not surprising that there are not many cases.

Graham Simpson: It raised my eyebrows when you said earlier that the Scottish Government's response was cobbled together using Wikipedia.

Dr Dixon: I urge you to look at the response from, I think, Scottish Environment LINK, which analyses some of the detail in the Government's

paper on courts. It shows a couple of diagrams, as well as a description of the court system, and says that they appear to have come straight from Wikipedia. There is a diagram that the paper says is about courts and tribunals, but it is only about courts; it does not include the tribunals. There is quite a bit of text in there that is either copied straight from, or that paraphrases, information that was produced the last time that environmental courts were reviewed, which I think was in 2017.

So, the analysis is that the Government's paper is a pretty shoddy, cobbled-together thing to make people go away. It was also quite hard to find. You had to look at the consultation page, and right down at the bottom, there was a little link to an additional court paper. Therefore, the Government did not wave it loudly at people to say, “Here's an additional thing that you might want to read.”

The overall impression is that the Government wanted the whole thing to go away. That is my personal view; it is not the organisation's view.

Graham Simpson: It is really concerning if the Government has gone to Wikipedia and copied and pasted diagrams or text.

Dr Dixon: Some things on Wikipedia are great, but, yes, it is strange if that is what the Government has done.

The Deputy Convener: As a committee, we will look at Scottish Environment LINK's response and consider from there. Do you have any other questions in this area, Mr Simpson?

Graham Simpson: I have just one more. Do you consider that the Scottish Government has taken such a position because it would rather like there to be as little comeback as possible?

Dr Dixon: I will say just one thing on that. Whenever the issue of environmental courts is raised, whether in Scotland or in other places, there is a fear that there will be an extra layer of bureaucracy, that everything will be slowed down and that it will be expensive.

The experience around the world is that having a well-designed environmental court or tribunal actually speeds things up, because it deals with issues before they get to the final stage. Instead of a situation in which a developer puts forward a proposal, communities object, it gets the go-ahead, there is an appeal and possibly a public inquiry, and there might also be a judicial review—which means that there is a very long process before the developer can actually get on with it or knows that they cannot—an environmental court would be engaged at the start of that process, or at least early on, so that it would be clear whether the proposal was in trouble or was likely to go ahead.

Jurisdictions that have a good environmental court or tribunal will tell you that they short-circuit huge delays in relation to planning systems and regulatory decisions because they get all the views together at the start. However, I think that the fear remains that an environmental court would be an extra system that would involve bureaucracy and delay, rather than its being seen in a positive light, as something that could short-circuit some of the delays that we already have in the system. A proposal would be killed off right at the start of a process if it really was not appropriate, or it would get the green light because everything had been sorted out.

The Deputy Convener: In your view, would a court give greater impetus for compliance?

Dr Dixon: Yes. The other lesson is that, if you are a developer in a country that has such a court or tribunal, you will try a lot harder to deal at the start of the process with any issues that you suspect might come up. You will engage more fully with the community, and you will do a better bat survey and so on, because you do not want to get to court and be told, “Well, your application was shoddy—you didn’t talk to the community or do the work that you needed to do.”

The fact that there is an environmental court or tribunal can concentrate the mind of an industry or a developer to do a better job and to talk to everybody right at the start.

11:30

Monica Lennon: A lot has been said already, particularly in Dr Dixon’s helpful opening remarks, but I will stick with the issue of Aarhus compliance. ESS has said:

“In principle, a court, tribunal or other judicial measures ... would help support better access to environmental justice for Scotland”.

Can you give examples of what “other judicial measures” could mean?

Planning has been mentioned a couple of times. In a previous session of Parliament, Graham Simpson and I were on the Local Government and Communities Committee, which looked at the Planning (Scotland) Bill and the opportunities that existed to make the process more democratic, for example by having rights of appeal. You said that a merits-based review is important when it comes to Aarhus compliance, but developers have that right now through the planning appeals process, while communities and—to use that horrible phrase—third parties do not.

What is meant by “other judicial measures”? Could we look at tweaking the planning system to get more equality around appeals to help with access to environmental justice?

Dr Dixon: I do not think that ESS has a menu of things that we could do, but community rights of appeal is certainly one of those areas in which you might think that ESS would make the system fairer and incentivise the developer to do a good job at the start, because they know that there might be a problem if they do not.

The bottom line for us is the Aarhus convention and whether people are getting access to justice in the way that it requires. The answer is clearly no on two significant counts, so the issue is how we fix that. It looks as though an environmental court or tribunal, if it is done right, would go a long way towards doing that, but there might be other ways. As you said, community rights of appeal might be one of those things that would, in that specific circumstance, address access to justice.

Monica Lennon: Do you agree with Scottish Environment LINK and others that there needs to be an independent review of the case for an environmental court or tribunal?

Dr Dixon: My personal view is that it is a good idea, but it is second best. What should happen is that the Government should do a proper review of environmental courts, rather than throw it to an external group that will think about it and produce a report, which, in three years’ time, the Government will ignore. I would rather that the Government gave up on what it has just done in relation to environmental courts and redid it properly, with the participation of others, so that we get the right result, rather than agreeing to throw the issue into a process that will put it in the long grass for a while, no matter how well that group does the work.

Monica Lennon: I want to briefly touch on the proposed human rights bill, because there are obviously high expectations around the right to a healthy environment. I was not able to be here in January for the session on environmental governance, but I looked at the *Official Report* and noted that Lloyd Austin, on behalf of Scottish Environment LINK, said that

“there is a risk that we will have a human right to a healthy environment that is a human right on paper and is not an effective and enforceable one.”

He went on to talk about the link between the governance debate and the human rights bill and said that

“in order to make the human rights bill effective, the governance questions need to be answered.”—[*Official Report, Net Zero, Energy and Transport Committee*, 16 January 2024; c 42.]

It is quite frustrating that what we have heard today and from others is that the Scottish Government is perhaps not being serious enough about the issue.

We will leave the Wikipedia issue for others to investigate. I know that my Wikipedia page is not accurate—I do not know how it can be fixed—because I am a planner, not a surveyor. That has been in there for a couple of years, and I cannot seem to get it sorted out.

How can the Government demonstrate that it is serious about the issue? What is the timeline for getting this right? The human rights bill is coming to the Parliament and, with regard to the compliance committee, there is a deadline of later this year to demonstrate what the Government is going to do. Is this time critical?

Dr Dixon: I think so. To be fair to the Government, the right to a healthy environment came up very early on in the discussion about the proposed human rights bill. I was part of some of the discussion groups and I kept track of the process. That right has been a firm part of the proposals and we are told that it will be in the bill.

At the top level, which is about whether we should we have the right to a healthy environment, the Government is doing the right thing; it is doing something that many countries have not done. That is great. If it is done right, it could be the most important thing that has happened on the environment for a decade, because it will give people a right to a healthy environment, which is really important.

However, that is useful only if you can do something with it in law. Can you take someone to court because they are breaching your right to a healthy environment or might it, as Scottish Environment LINK suggested, end up being something that exists on paper that does not have any teeth? It is a really important issue, and it is one that we are watching and have discussed.

As Mark Roberts suggested, how that relates to ESS is a very interesting discussion. Would we be part of monitoring enforcement? Would some of our functions go away because the right encompasses them and someone else would deal with them? It is potentially a big change for ESS, but it is a very important potential development in access to justice, so we are enthusiastic about it. As a board, we have discussed the issue and expressed our enthusiasm. Mark, have I missed anything?

Mark Roberts: I will drop to the level below that. We are actively involved in discussions with colleagues from the Scottish Government about how that might work and what that might mean for us as a scrutiny body in relation to other scrutiny bodies in the human rights area. If there is going to be a right to a healthy environment, that would likely fall within the definition of environmental law, so it would fall within ESS's remit. What would that

mean for individuals who want to exercise that right who come to ESS?

A lot of that thinking remains to be worked through, but the Government is trying to bring the environmental governance discussion and thinking together with the human rights discussion because those are inextricably linked. That is genuinely really challenging for the Government to do. It is absolutely the right thing to do but, at a practical level and, for me, thinking about what that would mean for ESS as an organisation and what my staff would be doing, that becomes a really challenging issue in the context of our existing powers and what we already have to do.

The Deputy Convener: That is helpful. We will move on to the issue of sewage discharges.

Mark Ruskell: This is obviously an issue of great public concern, and I note the number of submissions that ESS has received. The primary focus of those submissions has been SEPA's discretion under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 to regulate in that area and take enforcement action. Can you give the committee the top line from your investigations and spell out the next major steps for regulators and others in that area?

Mark Roberts: On the representations that were made to ESS around the controlled activities regulations, sewage discharge was one of the areas that we referred to on which we reached an informal resolution with SEPA. We wanted much greater clarity and precision with regard to what constituted a significant adverse impact, as set out in the controlled activities regulations.

As a result of the informal resolution, SEPA has updated its guidance for its staff on what would constitute a significant adverse impact, for example with regard to sewage-related debris. We think that that is a small step forward in improving the regulation of sewage discharges.

Dr Dixon referred to the fact that we are in the latter stages of completing a wider piece of work on combined sewer overflows and spills. We aim to publish our final draft report later in the spring—next month, I hope. That will not only make recommendations to the public bodies involved but identify a number of areas of further—potentially investigatory—work that we want to look at. It is a complex area of legislation and regulation, and I think that we will have to have several bites at the cherry in looking at different aspects in order to make that manageable.

We are also keeping an eye on what is happening on a European scale as regards the revisions to the urban waste water treatment directive. We have made reference to the Government's policy of maintaining alignment with Europe, where it deems that to be appropriate for

Scotland. That is an important piece of the context that we are looking at.

We are also conscious that the Government is currently consulting on future plans for waste water and sewage, which is positive, in that it recognises some of the challenges that climate change and wider population and behavioural changes will bring for the waste water network.

All that is happening simultaneously. To sum up, we have done an informal resolution on one element of the legislation, and we have a report coming out in the near future that will look at some of the data on combined sewer overflows, which is likely to generate further work for us. Finally, to return to what I said about the priorities for some of our analytical work, we want to start looking later this year at the system of river basin management planning in the round and at how well that is operating, with an eye to the fact that, beyond 2027, a new regime will come into place and we want to start contributing to that discussion.

Mark Ruskell: That all sounds substantial. I am sure that it will be a great help to the committee when those reports are published and we can look at that.

Can I take it from your answer that that will feed into ministerial objectives for Scottish Water's investment and that the report will be timed in such a way as to inform ministerial thinking and choices?

Mark Roberts: To be honest, we are not trying to time the report to tie in with ministerial objective setting. That is not our intention. We want to give the data on combined sewer overflows and to show how the legislative framework operates and where we think there may be opportunities for improvement.

I suspect that there may be issues about the availability and accessibility of data, which will be really important. All those things will come out in due course.

Mark Ruskell: Are you talking about CSO monitoring?

Mark Roberts: Yes. There is an on-going programme to increase the amount of CSO monitoring. We have had progress updates from Scottish Water and we will report on that as and when we see fit.

Mark Ruskell: Do you work on that particular issue with the OEP in England and with the equivalent Welsh body? There is a huge debate about water quality, which is worsening in England. Are you taking a shared approach to that, or are there separate workstreams?

Mark Roberts: The probably unhelpful answer to that is both. We share a lot of information about what we are doing with our colleagues in the rest of the UK. The OEP is in the midst of a major investigation about the responsibilities for waste water across the Water Services Regulation Authority—Ofwat—the Department for Environment, Food and Rural Affairs and the Environment Agency. The OEP keeps us apprised of what it is doing, and vice versa. We are not doing any joint work, but we are conscious of the direction of its investigatory work. Richard Dixon and I will meet the OEP leadership tomorrow and I expect that we will share notes on that. There are also regular conversations at operational level.

The Deputy Convener: Those are helpful answers and your forthcoming report will be extremely important in clarifying both the similarities and the differences between the position in Scotland and that in the rest of the UK. It will be important for the public and our constituents to understand that, so we await that report with interest.

We move to the issue of biodiversity; my colleague Jackie Dunbar has some questions on that.

Jackie Dunbar: How do you expect to engage in the legislative development of the proposed natural environment bill? I would be interested to hear your views on what the priorities of the bill should be.

Mark Roberts: We are actively involved in discussions with the Scottish Government and other stakeholders about the thinking behind the bill. It is worth putting on record that it is incredibly positive that a system of statutory targets for nature restoration and biodiversity—akin to what we already have for climate change—is being put into legislation. We are monitoring what is going on and are engaged in discussions.

11:45

The most pertinent element of developing the bill for ESS as an organisation relates to the point about the monitoring and independent scrutiny of progress against targets. The consultation on the Scottish biodiversity strategy delivery plan made reference to an independent review body that would report on that, and there is potential for ESS to take on that role. I do not think that we would shy away from the role, but we are conscious that it would be an additional demand on our resources, so it would need to be resourced. Having us take on that role, as an independent body that reports to Parliament, could be a powerful way of getting those tasks done.

Over the past decade and a half, we have seen how effective the Climate Change Committee has

been at the UK and Scottish levels. Having something that is similar, although not identical, to that would be effective in relation to improving accountability for and scrutiny of environmental performance.

Jackie Dunbar: With regard to establishing that review body, have you had any discussions with the Scottish Government about ESS taking on that role? Are you actively considering what expertise and resource would be needed to fulfil that role, should you take it on?

Mark Roberts: Yes, we are actively having conversations with the Scottish Government and actively thinking about what scale and range of expertise we would need and how we would access that expertise. That is very much a live discussion.

Jackie Dunbar: Do you have the expertise in-house just now, or would you have to go further afield?

Mark Roberts: We have some of the expertise in-house. We are actively thinking about whether we have expertise at the scale that is needed. Some of that expertise we could seek to recruit and some of it we could commission from external bodies. Working that out is quite high on my to-do list at the moment.

Jackie Dunbar: Thank you.

The Deputy Convener: We move on to the issue of air quality and back to Mark Ruskell.

Mark Ruskell: I will move from water to air. The committee did an inquiry on the back of ESS's first air quality report. I note that you have now produced a subsequent air quality report, which recommends the adoption of the World Health Organization's very stringent limits for particulates. That was not an improvement report on the Scottish Government, so I am interested in what that report's headlines are—the top asks—and also what the conversation with the Government on air quality now looks like, given that you have, in effect, produced an advisory set of recommendations with a slightly different status to the first report on air quality.

Mark Roberts: You have captured the headlines precisely. We are recommending that the Scottish Government look at those revised air quality guidelines from the World Health Organization and that it revises the Scottish limits for particulate matter in the light of those guidelines. It is worth putting on record that achieving those targets would be very challenging and demanding, but the public health evidence is increasingly clear that even very low levels of particulate matter cause significant health risks, which is why the World Health Organization has gone that far.

You are right to pick up on the fact that the new report has a different status. We can make recommendations to any public body, including the Scottish Government, under section 20 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. The missing bit in terms of the 2021 act is that there is no requirement on the Scottish Government to respond to such recommendations. We have asked it to do so. We will actively engage with the Government and talk to it about what its intentions are. We see this as a potential vehicle for the review of the cleaner air for Scotland strategy that the Scottish Government will be undertaking. We were slightly disappointed to see that the date for that review had been pushed back, but we will continue to engage with the Scottish Government on that.

Mark Ruskell: What practical changes are needed on the ground? Is it greater regulation of traffic and of wood-burning stoves, for example? Will a lot more work need to be done in terms of the Government and stakeholders coming up with an action plan to make progress towards a much more stringent WHO target, or is it pretty clear what the next steps will be?

Mark Roberts: There have been significant improvements in air quality in recent decades, and a lot of the focus has been on the transport sector and emissions from vehicles. Moving towards the more stringent targets that we are suggesting will mean focusing on a wider range of sectors in the future. A different approach will be needed. You have mentioned the residential sector—there has been an expansion in residential burning in recent years. We have also mentioned the need to move into the agricultural sector to consider agricultural sources of emissions. The change that will be needed will no longer be primarily related just to transport. Although transport will continue to be important, a wider range of policy areas will have to be brought into our thinking about air quality in ways that have not been so much of a priority in the past.

Mark Ruskell: A related issue on which we have had correspondence is the Retained EU Law (Revocation and Reform) Act 2023, and one piece of EU legislation that was revoked under that act was the National Emission Ceilings Regulations 2018. You raised concerns at the time about that whole framework and about how we would report and develop plans around air quality after going over the Brexit cliff edge. What do you see coming forward now? Do you have any more intelligence as to how that gap can be filled? I think that those regulations went in the autumn of last year. To my knowledge, no replacement in that area has been announced yet by any of the Governments.

Mark Roberts: That is correct—we made that observation in the report that we published at the

start of last month: that is one aspect of retained EU law that was lost, and that raised concerns about the accessibility of information on air quality and the requirement to take action, if necessary. A precisely similar point was made by our colleagues at the Office for Environmental Protection. I do not have any newer intelligence about what Governments across the UK are thinking in relation to whether anything will replace that legislation. The fact that I do not know anything suggests that there has been no news.

Mark Ruskell: Is there a practical implication if an organisation wants to challenge the Government on whether it is meeting its air quality standards? Is there an immediate gap there, and is that a problem?

Mark Roberts: When we wrote to the committee about our concerns in this area, we made a point about the availability to the public of information around emissions. The 2018 regulations also had a requirement whereby, if targets were not going to be met, an action plan had to be put in place to do something about it. I am not clear about the timescales for that, however; I would have to come back to you on that.

Mark Ruskell: Could the Scottish Government fill the gap unilaterally, or would it have to work within the UK framework?

Mark Roberts: One of the challenges is the capacity of the Scottish Government to operate on its own. The regulations were run on a cross-UK basis and, from memory, I think that the cabinet secretary at the time wrote to the committee, noting that it was quite challenging for Scotland to implement them on its own. I undertake to follow up on that and come back to you regarding what progress has been made. As I say, we highlighted that as an outstanding area of concern in our report of last month.

The Deputy Convener: For clarity, I would ask you to write to the committee, and your correspondence will be shared with all members.

We now move to questions on climate change more broadly. I will hand over to Douglas Lumsden.

Douglas Lumsden: Last week you published a report that found that the previous climate change plan update did not fully meet the requirements of the climate legislation. Can you expand a little bit on what the key issues were? What could be done in future to make that better?

Mark Roberts: That report flowed from a representation that we had received—which highlighted 166 recommendations from previous parliamentary committees—from the Climate

Change Committee and from Audit Scotland on the governance of climate change.

The representation sought some kind of assurance that in the next climate change plan, which is due to be finalised by March next year, all the requirements of the Climate Change (Scotland) Act 2009 would be completed. It was widely recognised that, previously, one element that was missing was a clear pathway from individual policies, proposals and plans to the levels of emissions that those were aimed at reducing.

That felt like a gap—the Climate Change Committee previously made that point, as did this committee's predecessor committees. We want the Scottish Government, in preparing a draft plan, to say, "Here are all the activities that we plan to do" and quantify by how much those will reduce emissions. That will enable us to see a clearer pathway from the individual actions to the overall emissions reduction.

Douglas Lumsden: So you do not feel that a pathway has been set. If it is not set, do you think that the Scottish Government will meet the emissions targets that it has set for itself in law?

Mark Roberts: In eight of the past 12 years, annual emissions reduction targets have not been met. That is a matter of record, as ESS, and a number of others, have said. We are keen for the Government to fulfil the requirement in the 2009 act by quantifying how it is going to get to those targets and breaking that down more specifically.

Douglas Lumsden: So the target that has been set just now is a headline one.

Mark Roberts: Yes.

Douglas Lumsden: You are looking for more meat on the bones with regard to how each organisation is going to feed in and contribute to meeting those targets.

Mark Roberts: It is less about each organisation, and more about each area of policy and how that will contribute. If the Government is planning to achieve a certain reduction by a certain time, how is that made up in terms of activity?

Douglas Lumsden: Okay—that is helpful.

My next question is on the memorandum of understanding that you signed last April with the UK Climate Change Committee, which is up for review fairly soon. I want to get an idea of how that MOU is working, and what future changes to it you might be considering.

Mark Roberts: It is working relatively well. We have regular conversations with colleagues on the Climate Change Committee, and we have a forthcoming discussion with the committee around

its work on climate change adaptation. Earlier this year, the committee's outgoing chief executive came to speak to the ESS board and team about its work, and how that interacts with our work.

I do not see any real need for significant changes to the MOU. We are required by the 2021 act to ensure that we minimise duplication with the work of the Climate Change Committee, so we are very conscious of the need to ensure that ESS does not double up on the committee's area of expertise. That is entirely pragmatic.

Douglas Lumsden: I guess that you would avoid that duplication by having good dialogue with the Climate Change Committee.

Douglas Lumsden: Absolutely.

The Deputy Convener: The final questions are on keeping pace with European Union environmental standards. I call Monica Lennon.

Monica Lennon: The topic has been mentioned a few times in the session today; it is very much on the radar of ESS and the Scottish Government.

I am looking for an update on what ESS has been doing to assess whether, and to what extent, Scotland is keeping pace with EU environmental standards. Dr Dixon, you helpfully mentioned the example of ecocide law. Even in the past week, there have been big developments in that regard. A European Parliament press release from six days ago stated that

"Environmental crime is the fourth largest criminal activity worldwide",

so it is no surprise that the EU has taken action to approve

"new rules on environmental crimes and related sanctions"

and crimes that are

"comparable to ecocide".

The Scottish Government is aware of that and has told me that it is continuing to monitor the situation. Nonetheless, the EU legislation is now coming into force. Is that an example of where there is live discussion between ESS and the Scottish Government?

In addition, the Ecocide Bill, which is a private member's bill, has been introduced in the House of Lords. Are we seeing a bit more activity in that area?

Mark Roberts: We are absolutely discussing that area with the Scottish Government with regard to your own work, Ms Lennon, and the developments that are happening in Europe. That is very much a conversation that we are having.

12:00

More broadly, on the Scottish Government's policy on maintaining alignment wherever appropriate, in answer to Mr Ruskell earlier I mentioned the revisions to the urban wastewater treatment directive. There are also revisions to the ambient air quality directive, which is relevant to the air quality reports that we have published. More widely in Europe, the breadth of the green deal, which the European Union is considering, is quite significant.

As we touched on, one of the challenges that we, as a small organisation, face is trying to keep an eye on all that, so we tend to focus on priority pieces of work. We concentrate our effort there, while also trying to keep a background watch on wider developments, which meets our statutory obligations under the 2021 act to monitor international environmental developments.

Monica Lennon: On that, your annual report mentioned there being an advisory panel on international developments. Has there been progress on that?

Mark Roberts: Yes, we have made progress. That panel has met. Its members are experts from a range of policy, regulatory, legal and political backgrounds, all of whom have experience in various aspects of the European setting. One member comes from the Institute for European Environmental Policy, which actively monitors divergence from EU policy at UK level. Even that member, for whom such work is their full-time job, finds the panel's tasks very challenging, given the scale of what is going on. The panel will probably next meet on the other side of the next European Parliament elections, by which time we will have seen the shape of European developments following those.

Monica Lennon: That is helpful. I do not know whether Dr Dixon wants to add anything.

I was struck by a passage in the same press release, which said:

"MEPs also ensured that member states will organise specialised training for police, judges and prosecutors, prepare national strategies and organise awareness-raising campaigns to fight environmental crime."

That seems very much linked to our earlier discussion of environmental governance and access to justice. Are you aware of similar commitments to embed training and upskilling of people who are on the front line and who are trying to do those difficult jobs at the moment? Dr Dixon, have you had any involvement in that?

Dr Dixon: Not so far. Ecocide is a good example of a subject that was being discussed in Europe. The Scottish Government said that it would keep an eye on it, and it is now going into

law. There is now quite a tough deadline for that, because it is supposed to go into national legislation for every member state within two years. However, as you suggested, things will have to be done beforehand. Training might need to take place before it goes into law, so now is the time to make progress on that.

More generally, the board is extremely keen on keeping pace with developments, so we ask lots of questions about that. We are assured that whenever any piece of work is started, whether it be considering a representation or reporting on a particular research topic, one of the first questions is, "What is the keeping pace angle of this?" For instance, on the report that considered combined sewer overflows, one of the first questions was, "What is the keeping pace dimension to this?" The answer was the fact that the urban wastewater treatment directive is being revised. There were several motivations for doing that piece of work, but one was because a change was coming from Europe. I can therefore assure the committee that the board is keen to keep track of such matters.

As Mark Roberts suggested, because we think about that aspect for every piece of work, although we have not so far done a big assessment that says, "This is where we're at on keeping pace", if you look across our reports you will get a picture of how we are doing in certain areas or what the challenges on keeping pace will be.

Monica Lennon: That is really helpful. Earlier I should have added my thanks to Jim Martin, the outgoing chair, and to Mark Roberts, the staff team and the board for all the amazing work that they have done in the past couple of years.

The Deputy Convener: That is a good note on which to conclude our evidence session. I thank Dr Dixon and Mr Roberts very much for their time, reflections and insights.

12:04

Meeting suspended.

12:07

On resuming—

Subordinate Legislation

Road Works (Scottish Road Works Register Fees and Miscellaneous Amendment) Regulations 2024 [SSI 2024/23]

The Deputy Convener: Our next agenda item is consideration of an instrument that has been laid under the negative procedure. That means that its provisions will come into force unless Parliament agrees to a motion to annul it. No such motion has been lodged.

No member has indicated that they wish to comment on the instrument.

I invite the committee to agree that it does not wish to make any recommendations in relation to the instrument. Do members agree to that?

Members indicated agreement.

The Deputy Convener: That concludes the public part of our meeting. We will now move into private session.

12:08

Meeting continued in private until 12:30.

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