



OFFICIAL REPORT
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Rural Affairs and Islands Committee

Wednesday 7 May 2025

Session 6



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NATURAL ENVIRONMENT (SCOTLAND) BILL: STAGE 1 1

RURAL AFFAIRS AND ISLANDS COMMITTEE

15th Meeting 2025, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Tim Eagle (Highlands and Islands) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*Emma Harper (South Scotland) (SNP)

Emma Roddick (Highlands and Islands) (SNP)

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

*Evelyn Tweed (Stirling) (SNP)

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Professor Rob Brooker (The James Hutton Institute)

Professor Davy McCracken (Scotland's Rural College)

Professor Kirsty Park (University of Stirling)

Professor Beth Scott (University of Aberdeen)

Jamie Whittle (Law Society of Scotland)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 7 May 2025

[The Convener opened the meeting at 09:39]

Natural Environment (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning, and welcome to the 15th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, please ensure that all electronic devices are switched to silent.

The first item on our agenda is consideration of the Natural Environment (Scotland) Bill at stage 1. At today's meeting, we will take evidence on parts 1 and 2 of the bill from a panel of academics and experts in biodiversity policy. I will invite you all to introduce yourselves in a minute.

We have allocated approximately two hours for the discussion, and we have quite a few questions to get through. Given that we have quite a few participants, I ask everyone to be succinct in their questions and answers. There will be some questions for which a straight "Yes" or "No" will suffice. At other times, you might want to agree with someone who has already given the same view as yours. However, do not feel that you need to participate at any great length on each question. There is no expectation that you will speak on every point. If part of the discussion does not relate to your area of expertise, do not feel that you need to participate.

I remind you that you do not have to operate your microphone. We have a gentleman here who will do that for you.

We will kick off, and I ask Jamie Whittle to introduce himself.

Jamie Whittle (Law Society of Scotland): Good morning, everyone. I am a solicitor, and I am here representing the Law Society of Scotland. I am the current convener of the sub-committees on environmental law and rural affairs.

Professor Beth Scott (University of Aberdeen): I am a professor of marine ecology at the University of Aberdeen. I have a background in the environmental impacts of offshore renewables, and I am here as part of the biodiversity programme advisory group.

Professor Kirsty Park (University of Stirling): I am an academic at the University of Stirling. I am

a professor in conservation science, and my research focuses on biodiversity conservation and ecological restoration. I have a particular interest in the long-term effects of restoration and how to prioritise actions for nature.

Professor Davy McCracken (Scotland's Rural College): Good morning. I am an agricultural ecologist with Scotland's Rural College, SRUC. I am helping SRUC pull together a written response to the committee's consultation. I am also involved with the Royal Society of Edinburgh on its response. Like Beth Scott, Kirsty Park and Rob Brooker, I am a member of the biodiversity programme advisory group.

Professor Rob Brooker (The James Hutton Institute): I am director of science at the James Hutton Institute, a member of the PAG and honorary secretary of the British Ecological Society.

The Convener: Thank you, all—you are most welcome. We have received apologies from Professor James Harrison, who intended to be here this morning but, unfortunately, has not been able to join us.

I will kick off by looking at part 1 of the bill and the targets for improving biodiversity. We are all aware that we are in a nature crisis, but what is the need for and value of statutory targets? In the past, the Scottish Government has consistently failed to meet non-statutory biodiversity targets. Why will it be any different this time round?

Professor Park: Part of the problem is the lack of statutory targets, which is why we have patently failed to meet aspirations for nature restoration. Such targets are critical to galvanise action, and that is the most important thing. It is not about targets or strategies; it is about doing stuff on the ground that will make a difference. If statutory targets help to focus minds on action to do the work on the ground, we will be in a much better place to get to the targets than by any voluntary measures.

Professor McCracken: I agree with and will add to what Kirsty Park has said. Statutory targets help to hold the Government of the day to account. I have been involved with the biodiversity strategy in all its guises since the early 2000s. We have had targets for 2010 and for 2020, as you alluded to, convener. I hope that having statutory targets will help to focus attention on the action that is needed to achieve what we are looking to achieve by 2030 and then 2045.

Professor Brooker: I echo what the others have said. We have had non-statutory targets for many years, yet we continue to see a decline in biodiversity. If we look across various reports—a good example is the "State of Nature" 2023 report—we continue to see declines in

biodiversity. There are a few successes on specific issues for some protected species and habitats where a lot of focused effort has gone on, but, away from those, we continue to see general declines in biodiversity. A non-statutory approach has clearly not worked.

Professor Scott: I can share an example from the marine world. In the early 2000s, when our fisheries were doing very poorly—only 30 per cent of them were sustainable—the laws were already quite clear that fisheries must be in a sustainable position, and we changed the amount of effort in our fishing industry. Over the 2010s and very recent years, we have increased that so that, now, 70 per cent of our stocks are sustainable. Things can be done when there is action.

09:45

Jamie Whittle: It is important to bear in mind the context. Scotland introduced what was a very progressive piece of legislation in the Nature Conservation (Scotland) Act 2004, which is not in play south of the border. To my knowledge, it was not influenced by Europe. However, notwithstanding that legislation, the statistics in nature decline are sobering, and something significant has to be done. The key—I am sure that this will come out in the evidence session—will be ensuring that the targets can be properly implemented and that they are robust and resourced.

The Convener: That takes me on to a supplementary question. The consultation in 2023 said that successful targets will need to incentivise transformative change and ensure that biodiversity is mainstreamed into all levels of government. Given the past record of the Government, how will the bill achieve that?

Professor McCracken: The agenda suggested that the mainstreaming question would come later—and it might want to come later. As I said, I have been involved with the biodiversity strategy in all its guises for the past 20 years. The rationale for having the biodiversity framework and governance structures in the bill, along with the existing biodiversity strategy and published delivery plans for the next six years, is that, on their own, those will help to mainstream biodiversity across all aspects of public policy and the public sector.

I question that—it is quite a heroic assumption. We have had governance for biodiversity since 2004. We have had a biodiversity reporting duty for public bodies since 2004. However, if you look closely at the delivery plans that were published last year or 18 months ago, it is clear that not all sectors that need to engage with biodiversity management are engaging with those delivery

plans. From my perspective, we need more in the bill to encourage that level of mainstreaming.

Members will be aware, because it is in the bill's policy memorandum, that, among the range of additional targets that were recommended or suggested by the biodiversity programme advisory group, was one to do with helping mainstreaming. I cannot remember the exact wording, but it is to do with the amount of action for nature to be taken by public bodies. That is not in the bill, and it is suggested that it is not needed because mainstreaming will happen anyway. I question that.

It is also suggested that having that target would detract from the focus on having action on the ground, which I do not particularly understand. If all public bodies were doing more and recording more about what they are doing, we would have a better understanding of what was happening in one part of Scottish society. I thought about this in the car coming over today but did not have a chance to look up the figure—Scottish Government public bodies own and manage quite a substantial proportion of Scotland's land. If we could at least make a difference on that land in the first instance, it would give us a big step forward towards meeting our ultimate 2030 and 2045 targets, and it would set an example for others, showing that it can be done.

The Convener: You mentioned the need to provide encouragement. How can we incentivise the transformational change that is needed? Should we use the carrot or the stick? Does the bill do that?

Professor McCracken: As with all these things, it will be a combination of both. The balance will depend on the particular area. We need biodiversity management to be prioritised across all aspects of Scottish Government policy. As an agricultural ecologist, I am more familiar with the agricultural policy side of things. We need biodiversity management to be embedded much more fully in agricultural policy. Kirsty Park said that we need action on the ground at scale. There are policies out there that are capable of influencing that, now and into the future, and we need to move the dial by moving those policies.

The Convener: I will bring in Bob Brooker.

Professor Brooker: I was just checking—seven topic targets were put forward, and the one that Davy was referring to is

“Positive outcomes for biodiversity ... in policy”.

It was suggested that that should not be taken forward as a statutory target, even down the road. I have thought about whether that is a problem, given that mainstreaming has been a huge

challenge in getting the scale and breadth of action that we need on nature restoration.

The silver lining to that potential cloud might be the target topic of enhancing environmental conditions for nature restoration, because the creation of those environmental conditions will probably necessitate multisector action. We know that the main drivers of biodiversity loss include invasive non-native species, pollution—diffuse pollution or point-source pollution—and land use change, which might relate to farming practice or conversion to forestry. Creating the environmental conditions for nature restoration might be a driver for mainstreaming action in other policy sectors as long as the reporting and the monitoring are tight enough. That is a mechanism that might drive mainstreaming.

The Convener: I apologise—you are Rob, not Bob. I should have checked that.

Professor Park: To add to those comments, if we assume that mainstreaming can happen, one of the problems with that is that most people agree in the abstract that biodiversity is important, but when it comes down to the specifics and the practicalities, there is always something more immediately important than the nebulous notion of biodiversity, which is simply a collective term for all our biological diversity.

One of the other problems that all of us around the room have is that we have not seen what we have lost, because we have grown up in the environment only over the past 30, 40 or 50 years. We can see the sheer diversity and abundance of the species that we have lost only when we look back at historical data sets. It is hard for us to experience that, because we have not seen the sheer loss that has taken place. That is a societal issue that probably impinges on how hard mainstreaming can be, because people who work in other sectors have different priorities that are not about nature conservation.

The Convener: You said that it is hard for us to experience that. There are different priorities, are there not? It is easy to set climate change targets by looking at the levels of carbon dioxide, methane and so on, which can be measured fairly simply. Biodiversity is a completely different challenge. If we want to protect ground-nesting birds, we need to do more to address predators. When we are talking about other small mammals, we must look seriously at the impact of badgers on the environment. How on earth do we set targets that identify individual species but have a far broader impact on general biodiversity net gain?

Professor Park: It is really complex. There is no denying that different species have different requirements, but there are also things that we can do that will have a positive impact on a range

of taxa. It is not that we need to do one thing for badgers and another thing for wading birds. We can take actions that will benefit large groups of species. That is one message to get across.

In PAG meetings, we talked about the plethora of targets that we could have. The three in the bill relate more to nature or ecology aspects, but there is also the societal aspect. Science can get us only so far. Without some societal targets, we are missing something here, but I understand why they are not in the bill at the moment.

Jamie Whittle: I want to make two points in response to the convener's question about incentivising the transformation that is needed. One is about the Agriculture and Rural Communities (Scotland) Act 2024, which replaces the rural payment scheme and allows a focus on incentivisation. Throughout that act, there is a very strong theme of looking at the environment and farming in more sustainable ways.

My second point is that, over the past year and on an on-going basis, a suite of laws has come in or is being consulted on. In addition to the Agriculture and Rural Communities (Scotland) Act 2024, we have had the Wildlife Management and Muirburn (Scotland) Act 2024, there is the Land Reform (Scotland) Bill, and we have crofting law reform. Those four have a significant amount of interplay and are significantly coloured by the nature restoration theme.

A point that the Law Society often tries to emphasise is the need to look at things coherently. We have a number of opportunities and tools—for example, codes on muirburn and codes on what large estates will need to do to look after grouse moors and biodiversity there. There is a lot bubbling away that will come to the fore.

Professor Scott: As has been said, it is really complicated, but that is why habitats have been front and centre. As soon as we restore a habitat or allow it to recover, the idea that “make it and they will come” comes into play.

When it comes to ecosystem approaches, it is true that things are complicated, but we now have a level of understanding that enables us to see how dynamically different species interact at different levels. In the marine world, an ecosystem approach lies at the heart of the national marine plan 2, so that, when we pull one lever, we can see what happens to something else at once. I think that we need to embed those approaches. At the moment, ecosystem approaches have been left out of the bill. I would push that. We should talk about what targets we need to have in order to bring that into the bill.

Professor McCracken: In the same vein, at the moment, there are three targets—or rather, three topic areas; I am sure that there will be more than

one target for each of them. The first is identifying particular habitats, the second is identifying particular species and the third is addressing the drivers for the decline in those habitats and species. If we can add to those the target relating to ecosystem health and integrity, that would be a good suite of targets. The ecosystem health and integrity target is not focused on a particular species or a particular habitat per se. It relates to the conditions or characteristics of those ecosystems and the landscapes in which they sit that are beneficial for the wider range of other biodiversity—biodiversity is simply everything.

I am quite sure that we will discuss that in the PAG. If we can bring that fourth target into the target setting early on, if not immediately, that would complete that circle or square, or whatever the right phrase is.

The Convener: I think that I inadvertently opened up another line of discussion. I will jump forward and bring in Elena Whitham.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): As the question was being asked, I thought, “I was going to bring that up.” I would like to explore the issue a little further. It is difficult not only to conceptualise and then implement the targets, but to measure whether they have been met. Professor Park talked about how difficult it is for us to imagine what we have lost.

If we look across at our other targets, such as our climate targets, which have been mentioned, how can we use them and other targets that are out there to help to drive the targets that we are talking about today and to understand how to measure progress on those? How can we measure something that we do not understand at the moment? It is very difficult to understand what net biodiversity gain will look like and how we can measure it.

Professor Park: It is partly a case of seeing the evidence. It has already been mentioned that although it will take time for species to respond to improving habitats, we have really good examples in Scotland that we can point to. We can say to people, “This is what happened when we reduced deer pressure. Woodlands are planting themselves—you don’t always need to plant woodlands.” It is a question of people being able to see the evidence of what conservation action can do. It can work, but it is not immediate.

We can learn from the other environmental targets. You mentioned the climate change targets, which are statutory. They involve specificity and a need for monitoring and reporting. We need all those things for nature conservation as well as for climate change.

Elena Whitham: Do you feel that measuring progress on nature conservation is a bit more

subjective because there is not a hard data set to look at in the same way that there is with climate change, on which there are numbers that we can look at?

Professor Park: The issue is not that there is a lack of data sets, but that we have many data sets. We have monitoring schemes already in existence for birds, bats, butterflies and lots of other taxa. There are already metrics that have amalgamated those to produce an overall trend. The issue is that we have more complex data sets rather than a lack of them.

10:00

Professor Brooker: It is a really big challenge. It is interesting to note that we saw quick action on chlorofluorocarbons because there was a thing to measure and a direct line to human health. Similarly, with climate change, you can boil it down to tonnes of CO₂ equivalent and point to very strong evidence that the issue will affect all of us. However, with biodiversity, there are many things to measure and it has many effects on us, so the relationship is much more complicated. Nevertheless, we have accepted that we need to consider biodiversity.

What is important to note about the target topics that have been included in the bill—almost hardwired in—is that those are possibly the ones that are easiest to measure, as we already have the datasets and the reporting processes from previous national and international commitments around species and habitats. Further, on the drivers of biodiversity loss, we do a lot of pollution monitoring and monitoring of invasive non-native species, pests, diseases and so on. It is good that those issues have been fixed into the bill, but that is probably because they are the ones in relation to which it is most straightforward to measure progress. I echo what has been said about the two that, it is proposed, will be addressed later. They are more complicated, but they are the really critical bit of biodiversity in terms of delivering ecosystem health and integrity and all the ecosystem services that we benefit from.

A lot of research is going on at the moment: we have brilliant new ways of monitoring the environment that we did not have five years ago. There is talk of light detection and ranging—LIDAR—overflight that will enable us to use the surface characteristics of our landscapes to get metrics about their health; there is new work on automated eco-acoustics, which involves simply listening to the environment to get an indication of environmental health; and there is also a lot of work being done on soil health. We now have a range of potential indicators that we did not have before, which might help us to address how we measure the complexity of the issue and how we

monitor the situation across Scotland. For example, if we are paying farmers to improve soil health, we need to know how we can enable them to measure that and work with us to gather the data that we need to assess the consequences of that initiative. The issue is complicated, but I think that we are in a much better position now with the new technologies that can help us to address some of those challenges with monitoring.

Professor Scott: The ecosystem services approach that Rob Brooker mentioned involves the idea that you are looking at just one layer that comes out of all that complexity. An example in the marine world is oxygen. A lot of people do not realise that every second breath that they take comes from the plankton in the oceans, but the question of how much we have is complex and is based on a bunch of aspects such as the physical aspects of the oceans, how many fish are in the oceans and so on. It is complex, but we can measure that and, again, demonstrate a direct line back to the importance of the issue to humans. That is quite a step change from what has been done in the past on indicators.

Professor McCracken: Although a number of us were talking about the need for additional and new data, the fact that some of the other datasets that Kirsty Park name-checked exist is important, because they give us baselines and let us know what the trends and changes have been in the past. Because of that, if positive benefits start to arise, as I hope will happen, we will start to see some of those occurring more quickly than we would if we had to wait for the new datasets to develop a trend line, which will take time.

The Convener: Rob Brooker, you talked about LIDAR. I know that the Government made a big announcement about that initiative a few months ago, saying that it was coming in on the back of a demand for those surveys, although I do not know where the demand came from. Will the LIDAR initiative be practically possible? Will it return results that will help farming in terms of biodiversity? Is it realistic? What sort of timescales are we looking at?

Professor Brooker: I am not an expert on LIDAR measurement, so apologies to any experts who are listening, but I would say that it is realistic. We have the technologies to do the overflight and we know how much it will cost. The real trick will be downscaling the data. You can develop indicators of general health but you need to ground truth that, so you need places where you can get long-term measurements of ecosystem function and health. A nice example of that is the research farms that some of the research institutes in Scotland run, where we have long-term assessments of ecosystem health and function. That will enable us to combine the LIDAR

data with what we know on the ground to test some of the metrics that are produced.

At this point, it sounds practicable, but I think that we need to make sure that we link up what we are getting from the overflight to what we are measuring on the ground, to ground truth the metrics.

The Convener: That was a bit indulgent of me, because I do not know whether it relates directly to the bill, but it is interesting to hear how it might work in practice. Davy McCracken, would you like to come in on that?

Professor McCracken: On that point, it does relate directly to the bill. It is not in the bill, but data will be fundamental to achieving anything in the bill, and LIDAR is another way of getting the larger catchment landscape-scale data that will be important.

I wanted to come in and add to what Rob Brooker said because, although I am also not a LIDAR expert, I know from asking questions about it earlier this week that there is a meeting happening today that we hope will decide where, at what scale and over what timescale the project will run and which areas will be prioritised. It is perfectly feasible to cover all of Scotland over a two or three-year timescale as long as there is some funding there, the cloud cover conditions are right and so on. LIDAR does not necessarily need the cloud cover conditions to be right, but I believe that the suggestion is to use a combination of LIDAR and aerial photography.

The Convener: Thank you. That is helpful.

Professor Scott: On the point about technology, in the marine world we had a massive step change with autonomous vehicles. I hope that everybody has heard of Boaty McBoatface, the big glider that was finally given that name, and we have mini ones of that now, as well as all kinds of upward-facing platforms. We can now pepper our oceans and collect data continuously and simultaneously across all the different levels of the ecosystem, which we could never do before. We have experiments going on now that function as a network of things that can talk to each other by sending data up to satellites, so you get some instantaneous information. That was not possible even five years ago. The step changes we have in technology will make a massive difference in the rate at which we bring in the data and in the types of data that we collect.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to go back to the issue of the topic areas that were effectively dropped by the Government throughout the consultation on and development of the bill. I want to get your reflections on why those specific areas were dropped. I guess you can argue that you can

approach mainstreaming in different ways, and Rob Brooker has already said that there is an element of incorporating that into the issue of environmental conditions as well. However, I am interested in some of the other areas, such as investment. There is no target for investment. Why do you think that the Government has decided to draw the line under the targets for areas in the bill?

Professor McCracken: The easy answer to that for those of us on the biodiversity programme advisory group is that we do not know. It was one of the recommendations that we put forward and we did not see that it had been dropped until the bill was published. The explanation that has been given is something along the lines of there perhaps being unintended consequences in terms of private and public funds being directed to meeting the target as opposed to physically doing anything on the ground, but I have not dug into that enough to understand what is meant by that.

Mark Ruskell: What do you think that it means? Is the concern that people would spend a lot of time measuring things and not acting? I do not quite understand that.

Professor McCracken: It could mean that people might pay for things that have a nominal focus on biodiversity but actually do not make one damn bit of difference on the ground—that sort of thing.

Professor Park: There was reference to the potential for greenwashing and concerns about that, but I think that, primarily, the Government felt that statutory targets were not the best way of achieving investments. As Davy McCracken said, we have not discussed that, so we did not see that it was not in the bill until the bill was published. There seems to be a recognition that private and public investment is desperately needed at scale, but we have not discussed the issue of there not being a target for that.

Mark Ruskell: So, you have not had anything back from the minister. It is probably a question that we need to ask him when he appears before us.

I want to ask about the targets that are there. With regard to the marine environment, it is quite easy to make designations, but it is a very different thing to put in place the action to enforce them and to change behaviour, particularly in relation to fishing and similar operations. I am interested in your thoughts on the mismatch between making designations over a lot of Scotland but then not following through with action. Do we have the right to enforce that action on the back of designation, or are we just going to sit there looking at a whole lot of lines on the map and think, "Great, we've done it"? Beth Scott, do you want to come in on

this? It is a pertinent issue with regard to the marine environment.

Professor Scott: Way back—10 or 15 years ago—I was on committees looking at marine protected areas in Scotland and Wales, and I agree with you that, a lot of times, without enforcement of the regulations, the areas are simply lines on a map. As we can see, a lot of the fisheries measurements are just being talked about now for the MPA systems that we put in.

We know that MPAs work if they are highly enforced and highly protected, especially if they are large and far away from everything. We know that they can work, but we need that level of enforcement. How we get there and whether this bill can help bring that in with regard to other aspects of biodiversity remains to be seen. However, at the moment, I am not sure exactly what else can be done to say that it must be done.

One thing that we could say is that the bill might help a lot of bits of the Government work together more. The MPA group, the offshore renewables group and the group dealing with our good environmental status could all get together in a room and discuss issues, with biodiversity at the heart of the discussion. That might help to speed things up.

Mark Ruskell: Do you think that the targets, as set out, will drive that joint working?

Professor Scott: I think that they will very much help. In the past, there has not been some sort of line that connects everything up like biodiversity might.

Professor McCracken: If by designation you mean a formal nature conservation designation, the first two targets—the habitats extent and condition target and the threatened species target—are not predicated solely on doing things on already designated sites or even extending designated sites, but also involve doing more on designated sites, depending on the particular habitat or ecosystem. A large proportion of our currently designated sites are in an unfavourable condition, so more needs to be done there. It is as vitally important to do more for the sites that sit outwith designation as it is to do more for designated sites, whatever those habitats are—peatlands or whatever. Neither the bill nor the biodiversity programme advisory group are suggesting that the solution is to designate everything, because clearly, to date, that has not been the solution. What we need to do is target action on those sites.

On the second target, on threatened species, you might think that the target concerns only the species that have been designated as being particularly under threat in Scotland, but that is not the intent—I think that the explanatory notes or the

policy memorandum go into that in a bit more detail. Certainly, the programme advisory group will continue to advise and recommend that the target concerns a broader range of species, because we need to stop the further decline of species that are currently relatively common but are starting to decline, otherwise, in 20 years' time, they will be in the same boat as the species that are currently threatened.

Designation is not the only answer. Some form of designation or assignment—maybe additional assignment—might be necessary to meet the 30 by 2030 target, which is not in the bill. I just wanted to come in and make the point that designation is not solely how we will expect Scotland to meet these targets.

Professor Brooker: I have a couple of things to add to what has already been said. I echo what Davy McCracken said about the need to broaden out from a focus just on threatened species. There are definitions of threatened species and, based on some of those definitions, some of the threatened species in Scotland might not count as internationally threatened species, but they are very important in Scotland, so we need to take that into account.

The bill talks about “the condition or extent” of any habitat, but the key thing is the condition and the extent of habitats, so that you are not just designating to get your volume up, but you are also making sure that what you have is in good condition. I know that groups such as NatureScot have a big focus on that, but I would just make that point on the wording.

Finally, on the target around environmental conditions for nature restoration and also the one that might come in, which is related to ecosystem health and integrity, as Davy McCracken said with regard to the desire to extend beyond protected areas, those two are metrics that could extend into the wider landscape. We have been looking at farming systems and upland systems, and across all of Scotland's nature. There is the potential to have that wider impact beyond the designated areas in those topics.

10:15

Professor Park: I know that Davy McCracken and Rob Brooker have already said this, but it is important to stress how critical it is that we continue to monitor and report on common species, which often do not get the attention because they are not rare. The really rare species are the hardest ones to manage, because they are almost at extinction or are at the point of local extinction. They are the hardest to manage, whereas more common species, in theory at least, are easier to manage, and they are probably the

ones that, at the moment, are playing the most important roles in ecological function and ecosystem services.

The “threatened species” term in the bill might be a little bit misleading, because the focus is not just on threatened species. However, I was reassured by the fact that the policy memorandum clarifies that we are including species that might be threatened in the future and that that includes common species.

Professor McCracken: Just to be pedantic, because I have edited too many scientific things over my life, I want to stress that those targets are topic areas, so there will not necessarily be one target for each, and there is likely to be more than one for most of them. There will not be a gazillion, as there needs to be balance, but there will not be a one-line target—at least, I do not see it that way, anyway.

Emma Harper (South Scotland) (SNP): Good morning. One of the first things that Professor McCracken mentioned was how much land the Scottish Government has. I looked it up and found that 889,000 hectares, or 11 per cent of Scotland's land area, is owned by Crown Estate Scotland, local authorities and so on. That is interesting. We could target that area in the bill to help to support the natural environment. That is just an initial comment.

We are talking a lot about targets and governance and about different Government departments working together. Professor Scott, you said that the bill would help to support people speaking to each other, working together and having the targets. Are there any concerns about what is in the bill on specific issues of governance or scrutiny arrangements? How do we make sure that that is mainstreamed? Mainstreaming is language that you have used, as well. Do you have any concerns about how we monitor and scrutinise what the bill proposes?

Professor McCracken: As always, Emma, there are a number of questions in your question. Governance is potentially different from scrutiny, which is potentially different from monitoring. On the governance aspect in a general sense, it is welcome that the bill emphasises having independent scientific advice, and not just because I and others here sit on the programme advisory group for biodiversity. Also—what is the term?—“affirmative procedure” is crucial to that part of the bill. It is welcome that Environmental Standards Scotland will have a role in looking into that aspect of how the targets are set, which targets are chosen and what datasets and so on are put out there.

On concerns about monitoring progress, it is proposed to report every three years, which

seems sensible from an ecological point of view. It will take three years to get sufficient data to know what is happening on any of the targets, and reporting every three years means that you have at least three data points in a 10-year period, so you will know whether an actual trend is starting to appear. That is welcome.

The bill says that the relevance of the targets will be reviewed at least once every 10 years, but I question why you would wait for 10 years. You could wait for 10 years to know whether the data is telling you something, but you will find out much quicker than in 10 years whether you have enough data to tell you anything about that particular target. I would suggest, and certainly SRUC will be suggesting, that it would be better to review the relevance of the target every six years.

On governance and scrutiny, we welcome the big role that Environmental Standards Scotland has in reviewing progress and what has been done, as well as the fact that it has the power, to some extent, to evaluate whether the scientific advice coming from the programme advisory group on biodiversity—or elsewhere—is relevant, robust and so on. A question in my mind is whether Environmental Standards Scotland has sufficient power to do something about it if targets are not being met.

Related to that—apologies if I am impinging on others' questions—are the parliamentary scrutiny arrangements. If a target is not being met for whatever reason, I question whether a minister making a statement to the Parliament and then saying what might happen to either change that target or put that target back on track is a strong enough consequence of a failure to meet a target.

I appreciate that you asked a lot in your question and that I gave a bit of a brain dump there.

Emma Harper: I am thinking about the three years of looking at numbers and targets and so on. Does there need to be flexibility in gathering data and reporting on it? I am thinking about ground-nesting birds. There are issues with curlew, lapwing and black grouse—if we do not do something now, it might be too late. Maybe we need to be flexible in data gathering.

Professor McCracken: Well, we need the data. The data must be there. We already have reasonable data on things like those ground-nesting birds. It is not perfect data, but we will update it and we will know whether things are starting to have an impact in particular parts of Scotland.

The issue is that it takes a three-year period to get enough information on each target, whatever the targets are, to bring them together. It is important to bring the information together in one

document. The three main topics in the bill plus ecosystem health and integrity, which I think we mentioned earlier, act as a suite, so it is important to be able to see them collectively. If you were looking just at

“the condition or extent of any habitat”

tomorrow and it was another three years before you looked at

“the status of threatened species”

and so on, everything would become too disjointed.

Professor Park: To follow on from that, it is not a question of just looking at the data; we need to be taking action now. I guess that the data will tell us whether or not, and over what period, our action is succeeding, but the action needs to happen right now. It is not a question of waiting three years or 10 years to see how dire things have got and then implementing something. There are already quite a few different initiatives and projects on the species that have been talked about. We already know what is needed. It is just that we need those things to happen on a much bigger scale than the scale at which they are happening at the moment.

Professor Scott: It may sound as though we are going back a tiny bit, but you were asking about what we own. In the marine world, we own it all. As citizens, we own what is in the marine environment bar the sea bed, which Crown Estate Scotland is in charge of. I think that most people are not aware that nobody owns all of that apart from us, as citizens, but there will be big changes as the energy companies come in, and we really should be discussing that in this context.

The Convener: This is a framework bill—we are not going to try to define what a framework bill is, but it is fairly obvious that this is one—and there are always concerns about how the secondary legislation that, in effect, puts the meat on the bones is developed and what scrutiny it comes under. Does the bill as it sits now give the Parliament enough scrutiny powers to deal with that, whether the measures are negative or affirmative? Could you deal with that, Jamie, as well as responding to Emma Harper's question.

Jamie Whittle: I will make my first point and then come to your question, convener.

The point that I will make on scrutiny is that a dimension of that is public scrutiny. I think that there are lessons to be taken from the exercise with climate change emissions and how that unfolded; the country is in the situation that it is in and new legislation is coming in. For there to be public confidence in a scheme, it is important that whatever goes forward in the bill is well resourced,

realistic and robust, so that there can be public confidence that the system will work.

Convener, you asked about the level of scrutiny of ministers, and you talked about the meat on the bones. This subject will be highly influenced by the scientific data gathering and analysis that is going on, so there has to be flexibility to legislate. However, there must also be commitment to the trajectory that the country wants to try to head in. I may not be answering your question correctly, but the issue is a difficult one. Certainly, there must be the element of flexibility to adapt—I very much defer to learned friends here—because I imagine that the need to adapt to changing circumstances in biodiversity is probably more problematic than looking at climate change targets, for example. There has to be flexibility, but there has to be a robust nature to it, too.

The Convener: Should there be further requirements in the bill for the Government to consult with the wider scientific world and then for the Parliament to decide whether that consultation is adequate to deliver the aims of the bill?

Jamie Whittle: My suggestion is that consultation is integral to making things go forward and giving confidence in the scheme that needs to follow.

The Convener: Emma Harper, do you have any further questions?

Emma Harper: No, that is it, thanks.

Elena Whitham: I am interested in exploring the timeframes and the timelines as set out. We know that they are very challenging: halting nature loss by 2030 and having restored and regenerated biodiversity by 2045. What are the panel's thoughts on how we ensure that the targets are set within realistic and achievable timelines and timeframes? Do you have any input on that for us?

Professor Park: As I mentioned before, and as you have just alluded to, most species do not respond instantly to, say, the creation of new habitat. Habitat is not created instantly—it takes years to develop—but you can set interim targets to check that you are on the right path. One of my subjects is woodland ecology, and we can ask, for example, whether we have facilitated sufficient increase in tree cover. Woodland species will eventually colonise and establish, but that might not be your immediate target. Interim targets and milestones will make sure that we are on the right track. There is a tension in that, if we set the target too far in advance, we will not do enough now. The action needs to happen now, if not 10 or 20 years ago. I hope that a tight target will galvanise action and attention; if we put the target too far in the future, it will not do that.

Professor McCracken: As the convener said at the start, and as you will have seen from the biodiversity strategy, biodiversity is in trouble now and climate change is exacerbating that. That is one of the reasons why, although 2030 and 2045 may be the nominal dates, we strongly need action now, as Kirsty has emphasised. The best time to plant a tree was 20 years ago, the second-best time is now, and so on.

Having said all of that, and going back to your question, what will be important specifically with regard to the bill and the secondary legislation is that the secondary legislation comes forward as soon as possible once the bill has passed—at least within the space of a year and no more than a year, or we will be hard up against it. We will know by 2030 what the direction of travel is, but, despite all the actions that are happening and have been happening over the past 20 years—they are not happening at scale—we will be very hard pushed to reach any semblance of the halting that we are trying to achieve, as far as possible, by 2030.

10:30

Professor Brooker: The key thing, as Kirsty said, is that we should have done this years ago, to be honest, and we are hard up against it for 2030. If I were to put a finger in the wind to see whether we are going to achieve that target, my opinion at the moment is that, no, we are not. That should not stop us from taking the action that we should take now to push as hard as we can for it. It is sensible that, in the framing of the target topics, they are being put forward as a combination of action and outcome, because it is a trajectory. We can start measuring some of the action on the ground in terms of dealing with the practice that we need for ecosystem restoration. The outcomes are things such as threatened species' or other species' conservation interests, for which we have good data. For some of those targets, we are in a position to implement and monitor activity and to see what the progress is. It is hugely challenging, but that should not prevent us from trying our best.

Elena Whitham: I studied environmental science at college as a teenager—I am 50 now, so that is a very long time ago. At that time, we spoke about tackling CFCs and other things that we were able to take tangible steps towards. Some of the things that we are talking about are things that I recognise from back then, when there were no targets set for change to happen.

I am interested in exploring what Jamie Whittle said about how we get not only public confidence but public sector confidence and business confidence, and the roles that they will play in this. We would not want other sectors to fall foul and

not keep up with what they need to do, because everybody is responsible for this. In the timeframes that we have, will we be able to take the public, the public sector and the private sector on this journey with us to ensure that they play their role and do not fall foul of any legislation that we bring forward?

Professor Park: This is not a direct answer to that question, but one thing that we have not said so far is that sometimes it is not about doing stuff; it is about not doing stuff. An example is not destroying loads of ancient woodland and thinking that you can just plant lots of saplings and that will replace what you have lost. On reaching the targets, if you stop doing the really damaging things, that, at least theoretically, can be much easier, as you do not have to wait ages for the outcome because the habitat and the species still exist. It is a combination of doing stuff and avoiding doing the really damaging things.

Professor Brooker: Last night, I was at an NFU Scotland reception and the feeling that I got is that the farming community is behind supporting nature in the same way as it is behind climate change action, but it needs support to balance sustainable farm income with the actions that are needed on nature and climate. Other mechanisms, such as farm payment mechanisms, are key to helping to align that. Is there commitment and interest in this? Yes, but the different sectors need the support to come through.

The Convener: When we had farmer stakeholders here, we heard that there is a sense of complete inertia when it comes to forming policy. You sit on a biodiversity forum. The agriculture reform implementation oversight board was described as a fig leaf for doing nothing. Will we see plans being developed at the pace that we know is needed? Will co-design be part of this, or, ultimately, will we just not make the progress that we need?

Professor McCracken: The committee might or might not know that I also sit on the academic panel advising the ARIOB process—maybe I should have revealed that at the start. To answer your question directly, convener, it needs leadership within the Scottish Government to join the dots between the different sectors—in other words, to bash heads together. If that does not happen, the progress that we need will not happen.

On incentivising or bringing people with us, the farmers are a good example, but other sectors will be the same: it is about what it is in it for them. In taking action on biodiversity or climate—or both at the same time—what is in it for them? From a farmer's perspective—that is where I am coming from—many of these actions not only will benefit biodiversity and climate mitigation and adaptation,

but will help to make farms, crofts and land much more robust and resilient to on-going climate change.

The general public, including ourselves, is a much bigger ask, because it covers so many individuals with different interests. On the biodiversity and nature restoration side of things, the scale of the action that needs to occur on the ground is crying out for a new set of skills to come forward.

I am representing Scotland's Rural College, which has an education remit in this. Filling that skills gap will be advantageous to wider society in developing new careers and new pathways, not just for new businesses but for existing businesses to move into this space. That is and should be a huge incentive.

Professor Scott: I completely agree that we have to bring the public with us. Not that many years ago, people would not have known what their carbon footprint was, but now they do, so we should have a biodiversity footprint—hopefully in a positive way, not a negative way. Examples are happening already with industries offshore. All the offshore wind developments have to prove that they will be nature positive—with a net gain—when they go in. Developers must, by law, improve the environment to better than it is now—because it is in a degraded state—when they are done putting in those developments and are running them. I am not sure that the equivalent is happening on land, but it has been happening offshore for some years now. That really embeds the issue such that people do not talk about a development without talking about it being nature positive.

Mark Ruskell: On the back of that, I am interested in your thoughts on just transition. There are sectors of the economy that will have to change substantially, such as scallop dredging inshore and livestock production in areas where, if there was herbivore reduction, we could see large-scale nature restoration and woodland creation. There are difficult economic issues about how those sectors will transition away from what they are currently doing and take the jobs and skills with them—with people and with communities.

Is there enough of a focus? I think that one of the subject areas for targets that was dropped was citizen engagement, which, for me, is about just transition. There are some thorny issues in here around action and what prevents action. I am interested in your perspectives, looking at environmental change as academics, on where you see that societal change process and how you facilitate that—or is that more of a subject for colleagues in other departments?

Professor McCracken: I will link that question with the convener's question. It goes back to the different sector teams in the Scottish Government realising that things are interrelated and joining up a lot more to help facilitate some of the changes that need to be in place on alternative land management or fisheries management practices.

Professor Park: I am not an expert on this at all, but there is a plethora of potential jobs and careers out there that would be facilitated by nature restoration. It is not that it will all be passive and does not need intervention. As Davy McCracken said, it is about joining that up and allowing people to see that there is an alternative job or career.

Mark Ruskell: Do you think that will come out of the bill?

Professor Park: No, but that was not the purpose, at least not in how we discussed it.

Professor Brooker: Something that might come out of the bill is the need to create the conditions for nature restoration, which will mean a transition to different operating approaches for some sectors. As Professor McCracken was saying, there are a lot of interesting alternative approaches from the farming sector, which realises that that is what it needs to do for a resilient, climate-proof future. There are elements in there that, if implemented as you might hope, could drive that change across sectors to enable a just transition.

Civil society understanding and benefiting from nature is one of two elements that were not included but that will be looked at further. I think we all agree that that is absolutely essential, because we need to continue to explain why it is important to invest public and private money in the transition to a more nature-friendly future in the same way that we have made those arguments about climate change.

Another key thing is that not only do we have new data and new approaches for monitoring, but we have so much more data than we used to have about the importance of nature. It is not a "nice to have" any more. We know that financially, socially and for health it is essential, so we cannot keep kicking the can down the road. We are now in a good position to make those arguments about why we need to do this.

Beatrice Wishart (Shetland Islands) (LD): Professor Scott spoke about offshore developments, which are businesses. Are the restoration mitigations that they might have to put in place adequate? Are they sufficient for nature restoration?

Professor Scott: That is a really good question. We know little about the effects of such

developments and, therefore, what the mitigation should be. So far, the focus has been very much on mitigating seabird collisions by getting rid of invasive predators at seabird colonies and that sort of thing. Many more changes will happen when you put structures in the environment and when you extract gigawatts—nuclear power plants'—worth of energy—out of our oceans. You are taking out the wind that would have mixed the oceans a bit.

We do not quite know what the mitigation should be, because we do not quite know what is changing. However, I see a positive attitude from the developers. They want to know what to do and they want to implement it. Those people and groups very much want the oceans to have better environmental status. The willingness is there, but we need a lot more information to make sure that the mitigation will work.

The Convener: Jamie, do you want to come in?

Jamie Whittle: I want to touch on Mark Ruskell's point about just transition, culture change in Scotland and what adaptations are required so that people can embrace the biodiversity changes that are needed. My impression on the ground, as a lawyer, is that a range of landowners have changed their position on how they manage land and are looking at the new opportunities. For a number of years, there have been changes to agricultural subsidies, and farmers have been waiting for clarity on how they need to adapt and reconfigure their businesses to put themselves in the best position to farm in ways that are sustainable and embrace green elements.

Probably underlying that is the need for a combination of stewardship and—without being pejorative—education for communities, so that they can understand the importance of the just transition. I have seen so many good examples on the ground. I am partly involved in one on the river Findhorn, in the north of Scotland: the Findhorn Watershed Initiative. It is a good example of a ground-up project that takes place when a community understands the need for change, as opposed to being a top-down project. Multiple projects are going on across Scotland that are led by the grass roots and have that strength.

We need to bring together the changing legislation, the science and the cultural change. The cultural element need not be in the legislation; it is more a by-product of what is coming. I think that there is a willing receptivity towards that change.

The Convener: Our final question on part 1 is from Evelyn Tweed.

Evelyn Tweed (Stirling) (SNP): Good morning, panel. Thank you for all your answers so far. They have been very helpful.

How does the approach to biodiversity targets in the bill compare or align with other domestic or international approaches in the United Kingdom, the European Union or elsewhere? Is there anything that we can we learn from elsewhere?

10:45

Professor McCracken: You will probably be aware that England has set statutory targets for a range of different aspects. I cannot remember the date when they were set and I do not have it in front of me, but it was done relatively recently. Those targets are currently coming under criticism for a lack of ambition and a lack of implementation.

Wales is talking about setting targets, but, unless things have changed in the past week, it could be 2029 before it publishes those targets. I am aware, however, that there were some more recent discussions in the Senedd in the past week or 10 days.

In the EU, the nature restoration law that has been in place since 2024 puts a statutory obligation on doing aspects of nature restoration, focusing on various habitats and so on, but it is coming under criticism. There is political resistance in some member states and there are funding issues. One of the environmental NGOs or consortia of environmental NGOs suggested that there was a £20 billion or £30 billion shortfall in funding for action under the nature restoration law. There is also vested interest, and there is resistance to doing anything, particularly from the agricultural and renewable side of things.

The lessons that we can learn from there for Scotland and for this bill relate to what Kirsty Park said earlier. Targets are only one thing; they also need to be put in place. There needs to be the framework, policies and funding to ensure that the actions can happen on the ground and that the data can be collected to know whether those actions are having any impact. That is the key thing, and it is a key part of the failure of our climate change targets in Scotland. There was nothing wrong with the targets per se. The issue was the slowness in taking action “on the ground”—I say that in inverted commas, because I appreciate that we are probably talking about a wider range of areas—and there was an issue with making sufficient progress quickly enough.

Yes, you can set a target, but you then have to work out how you will facilitate, engage and do all the things that you have been talking about this morning to get additional action happening on the ground, now and in the future. For me, that is the lesson.

Professor Park: To add a global flavour, in terms of alignment, we are in the middle of the

UN's decade on restoration. The statutory target element of the bill would help with meeting several of the United Nations sustainable development goals. Globally, it aligns well with those.

Professor Scott: We have had the marine strategy framework directives since, I think, 2012, which implies that we should have good environment status in our oceans. We have 11 descriptors, and one of them is biodiversity, so it has been around for a long time. Hundreds or maybe thousands of scientists got together and decided on the 11 descriptors, each of which has multiple indicators.

We also have the methodologies of how to collect the data, what the thresholds are and what the units are. It is just that no one in the UK ever put the money in to monitor whether we have good environmental status. We do it to a minimum level, but we do not do it in its entirety, and we certainly do not do it well enough to look at ecosystem effects and whole biodiversity effects. The willingness is there and the approach is there; it just needs to be joined up and brought online, and there needs to be an appropriate amount of funds to allow us to understand whether we have good environmental status.

Emma Harper: I have a supplementary on that. There are cross-portfolio requirements when we are considering biodiversity or health, for instance. The low-emission zones that have been implemented in London have resulted in a reduction in hospital admissions for folk with asthma. We have seen low-emission zones working elsewhere and that is a cross-portfolio good news story. Does the language of the Natural Environment (Scotland) Bill support the need to look at not just biodiversity but health, for instance, when considering the natural environment?

Professor Park: There is now really good evidence that people benefit hugely from going out into nature. The mechanisms are not fully understood, but the data is certainly there. There are now green prescriptions for people to get out. Part of that might be about exercise, but part of it is about being in the natural environment. There are massive health benefits, which is particularly relevant when considering the statutory targets on the condition and extent of the habitat and the status of threatened species.

Emma Harper: I probably need to remind people that I am still a nurse and that I am the co-convenor of the cross-party group on lung health. That is why I am asking health-related questions.

The Convener: Finally, the policy memorandum states that

“there is a good degree of confidence that the policies developed will have strategic alignment”

with the EU. How important is that? Given the concerns that you raised about Europe—we have heard that the green deal has almost collapsed and there are issues with funding for nature restoration—how important is it that we have a strategy that is aligned with the EU rather than more broadly with the UN?

Professor McCracken: There are two answers to that question. The first is from the biodiversity perspective. It is very important that the actions on the ground and the outputs that come from those actions for the health of the habitats and the species are as aligned as possible, in particular because species do not recognise national or international boundaries. Yes, we are talking about improving biodiversity here, in Scotland, but that sits within the wider context of the UK and Europe and so on.

On whether the bill allows Scotland and the Scottish Government to remain aligned with the aspirations of the EU, that question is much more political than scientific, and it is one that I am unwilling to give a view on.

The Convener: That brings us to the end of the questions on part 1. I propose that we have a five-minute comfort break and resume just after 5 to 11.

10:52

Meeting suspended.

10:59

On resuming—

The Convener: Welcome back. We will now look at part 2 of the bill, “Power to modify or restate environmental impact assessment legislation and habitats regulations”. We will kick off with a question from Rhoda Grant.

Rhoda Grant: I want to ask about the role that the EIA legislation and the habitats regulations play in protecting the environment and biodiversity in Scotland. To what extent can they present barriers to tackling the twin crises of biodiversity loss and climate change?

Professor McCracken: In general, the environmental impact assessment legislation and the habitats regulations are fundamental to protecting and helping to maintain biodiversity and to addressing wider environmental concerns in Scotland. They underpin those efforts in different ways. Environmental impact assessment comes into play when a change is proposed. It considers whether the impact of that change will be good, bad or indifferent, and, if it is bad, whether that is acceptable. The habitats directive is more about where action will be targeted to maintain the

designated sites that we talked about earlier and understanding whether those actions are having the desired outcome. Both the EIA legislation and the habitats regulations are fundamental not just to Scottish legislation but to legislation across the UK and in the EU, regardless of whether we are in the EU.

On the issue of barriers, it was interesting to see that coming up not only in the context of the bill but in the agenda that we were given beforehand. As we are in a period of climate change, some of our habitats are potentially changing. Designated habitats that change might or might not have the potential to remain important for whatever factors they were designated for, but the habitats regulations already have processes in place to deal with those aspects.

To my mind, a bigger question—before we start changing the environmental impact assessment legislation or the habitats regulations—is that of how they are currently operating. Are they fit for purpose as they are? Others can speak for themselves, but I would probably argue that the habitats regulations are fit for purpose both now and for the foreseeable future, at least.

The question to ask about environmental impact assessments is whether, as they currently stand, they are being implemented appropriately when they should be. Mention has been made of woodlands. At the start, I mentioned the Royal Society of Edinburgh, which will provide a written submission to the committee. Spoiler alert: on the back of the forestry inquiry that it carried out last year—I am getting my years mixed up—it will express big concerns about the necessity for environmental impact assessments being ruled out as part of the screening process and, therefore, not being required for many new, larger-scale forestry establishments.

In my view, environmental impact assessments and the habitats regulations are important, and they will continue to be important. Let us check that they are fit for purpose and are being used effectively before we start thinking about changing them, certainly in as broad and as marked a way as seems to be suggested in the bill.

Others might want to come in on that—Jamie Whittle, in particular.

Jamie Whittle: I do not mean to start off on the wrong foot, but I think that it might help if I give a bit more of an explanation of what the environmental impact assessment process is.

The EIA process originated in the 1980s in Europe. It is a process that a developer will undertake when they are proposing to carry out a development of a particular scale. It is done as a means of testing the environmental impact that the development will have on the natural environment

and on neighbouring people and their houses. A range of factors will be assessed, including the impact on species, the impact of noise and the impact on hydrology, landscape and so on.

There are certain developments that must have an EIA, which are known as schedule 1 developments, and there are others for which an EIA is discretionary. A housing development, for example, may need to be of a certain scale for a Government body to determine that there should be an environmental impact assessment or, instead, some lesser form of environmental assessment.

As has been mentioned, an EIA involves two initial stages. The first is screening, which involves the discretionary element of the decision maker saying that an EIA is or is not needed. If it is decided that an EIA is needed, there is then a scoping phase in which the extent of the EIA, the different chapters that it will include and the different scientists that will need to be involved in writing it are determined.

I would not suggest that that process, in and of itself, is a barrier to climate change mitigation or to tackling the nature crisis. If it is done properly, an EIA should inform a developer as to whether their development has been designed in the right way. Is it in the right place? Is it of the right scale? Is it being mitigated appropriately to reduce the impacts on biodiversity and climate change?

As far as the habitats regulations are concerned, their core focus is the designation of two types of area. A special area of conservation protects habitats and certain fauna, whereas a special protection area is more focused on birds. Those come out of the European birds and habitats directives. They create a particular buffer of protection that makes it much harder for a development to have an impact on those areas. Not only are the areas designated; often, a higher level of assessment, which is called an appropriate assessment or a habitats assessment, has to be carried out to determine whether the development will impact the various species or habitats for which protection is being sought.

Environmental impact assessments and designations under the habitats regulations are tools that are integral to how we look at nature conservation. Biodiversity, which was discussed earlier, features within that, but, as another contributor mentioned, it permeates outwith the designated focused areas. They are tools that come together. I hope that it was helpful to unpack that a little.

Professor Scott: I would like to come in on the issue of where some of the barriers come up. In the marine world, if you look at the maps, you start to realise how huge the areas involved will be if all

the proposed wind farms go ahead. With EIAs, assessors are finding that they cannot add up the impacts across the different developments and arrive at a cumulative impact, because they are not designed in that way. I will give a brief example. If you were to simply add up the figures from different EIAs, you might be adding up the mortality of the same seabird five or six times, which would make it look as though many more birds would be killed than was the case.

This is a personal opinion, but I would say that where we really need to improve things is at the strategic environmental assessment level—the wider regional level. Instead of changing all the legislation, perhaps the EIAs should be taken out of the process of looking at the larger strategic level. Especially with marine spatial planning and the national plan that is coming along, we should try to look at the picture as a whole. That would make the EIA process much simpler, and it would speed up consenting. Much of the work on where the impacts would be and what the scoping should cover will have been done at the SEA level. In that way, the EIAs could be used to look at cumulative effects and would no longer be a barrier. We do not have to change everything to get there.

Rhoda Grant: We were told in evidence that designations under the habitats regulations, in particular, often homed in on one species rather than the area as a whole and that that could have unintended consequences for other species and different things living in that area. It was felt that it should be a wider process. If a species is under threat, it should be protected, but the impact should be measured of those management techniques on other species in the area and on wider environmental and biodiversity issues.

You have a puzzled look, which suggests that you do not quite understand me.

Professor Park: We designate sites—SACs or SPAs—for particular species. Sometimes, a site will be designated for several species. However, I am not familiar with that process impacting on any other species. Designation generally means that that site has high levels of protection and that management measures might be used for that site, but I am not familiar with the idea that that has negative consequences for the non-designated species at those sites—at least, I have not come across that.

Jamie Whittle: Maybe I can assist.

When a special area of conservation is designated for species of fauna—non-birds—or types of habitat, such as the habitat of ancient Caledonian pinewood forest, Atlantic oak woods or high-quality blanket bog, or a particular species, such as salmon or golden eagles, those species or

habitats are treated as the qualifying features of that designated area.

When a developer comes along and proposes a development that requires an EIA, it will not assess only those particular elements. The EIA will look at a much broader suite of different chapters of assessment, such as ecology, ornithology, landscape and so on. In addition, there will be a habitats assessment. Once a developer has put together an assessment on the EIA, there will be a Government-led habitats assessment that will look at the qualifying features of the special area of conservation or the special protection area. It will assess whether the proposed development will affect the integrity of the protected area and whether it is permissible. That takes one into a different set of rules, compared with an EIA.

The thrust with such protected areas is that, although one might have what one might call a litmus test, whereby some species or habitats are particularly monitored, in order to keep those species or habitats in a favourable status it is necessary to look at the bigger picture of the habitat. The habitat has to remain healthy for those species to remain healthy. In many ways, that is a by-product of the tool of protecting that area of land for that species. The process of seeking to protect the wider habitat for their benefit has wider ramifications.

Professor McCracken: I might have picked you up wrong, Rhoda, but I thought that you were suggesting that, if there was too much of a focus on one species, that might limit what could be done for other species in the area. Like Kirsty Park and Jamie Whittle, I am perplexed by that suggestion. We would normally find that, whatever that qualifying feature is, it is characteristic of the general habitat—the landscape or the area in question—so a wide range of other habitats and species benefit from the management that is put in place.

On Saturday, because I have been working on red-billed chough on Islay for 38 years, I will be doing a survey of them. There are plenty of designated habitats on Islay for other things and plenty of sites designated specifically for chough. They all interrelate. I am finding it hard to think of a situation in which something that we require for chough in a particular area would have detrimental effects on other aspects of biodiversity that are characteristic of the habitats that they live in.

Rhoda Grant: I will turn the question on its head slightly. Might you have to do other things—for instance, in relation to another species—that might not necessarily protect the species around which the designation sits? I am trying to remember the case that we were given. Would you have to stop implementing those other policies

because they might not sit comfortably in relation to the species that was designated?

Professor McCracken: I will use the example of the choughs on Islay again. Corncrake and chough need completely different types of habitat management. It is not quite as simple as this, but, generally, corncrake need long grass for a long time and chough need relatively short grass for some of the time. There can be the possibility of tensions there, but it is still feasible, within the confines of somewhere such as the island of Islay, to find a balance within the current legislation and the current nature conservation management approaches to do both.

Rhoda Grant: Would that be the case even if one species was not protected and one was?

Professor McCracken: You would probably put more weight on what was happening to the protected species and, as Jamie Whittle said, the potential impact on it, but it would depend on the situation. It is not easy—it is probably impossible—to give a generic answer to that question, I am afraid.

11:15

Tim Eagle (Highlands and Islands) (Con): Good morning, and thank you for your answers so far. We have slightly touched on this point already, but I was looking at the English report that came out about sites of special scientific interest and SPAs and I noted that more and more of them are in an unfavourable condition. These are important pieces of legislation that are designed specifically to target species, whatever the impact on the wider landscape, but is there is a problem there? In relation to this bill, what are we looking at?

My second question will be about the devolved power, but, first, what is causing that problem and what can we do in this bill? I presume that the situation in Scotland is similar.

Professor McCracken: It is certainly similar in Scotland. As I mentioned, for a number of our designated sites, the features for which they are designated are in an unfavourable condition. The percentage of those in unfavourable condition will depend on the particular habitat or feature, and the level of concern will vary, but we do have that situation in Scotland.

Again, there will be different drivers, depending on the site or the situation. In the cases that I am familiar with, it is about being able to negotiate directly with the land manager to get the relevant management in place for long enough to achieve improvement. That comes down to a willingness to engage, as well as to getting some level of funding, depending on what management is needed.

Professor Park: In addition, we must recognise that these SSSIs are generally very small. All the land use that goes on around them directly impacts on them as well. The protected areas are important, but the designations are not sufficient on their own—they have never been sufficient on their own. Climate change will exacerbate the issue, but the land use that goes on around those sites can be one reason why they might be in an unfavourable condition.

Tim Eagle: This morning, we have been driving at that bigger picture. You cannot do things in isolation; it is about having a collaborative approach over whole landscapes.

I will move on to my next question. Through the bill, the Scottish Government is taking a delegated power and saying, “We can have full control over this through secondary legislation.” Framework legislation is a nightmare because, on the one hand, it is adaptable, you can easily move things behind the scenes and you can respond quickly, but it also brings problems economically, because businesses have no certainty over how things might change over time. Do you have any thoughts on whether that power in the bill is necessary?

Professor Park: I do not have the legal knowledge that our friend Jamie Whittle has, but I am concerned about the breadth of the powers that the Government would have. It could make extensive reforms to some of our most vital environmental protections. That might not be the intention of the current Government, but the legislation would be in place for years to come. We have no idea what future Governments’ priorities will be, so I am concerned about the breadth and the scope of that part of the bill.

Professor Brooker: I echo what Kirsty Park said about the open-ended nature of the provision. I am not a legal expert, but I have talked to colleagues at the James Hutton Institute and the extent of what could be involved is unclear. The habitats regulations and the EIA are important for nature conservation—there are good scientific studies on how they have delivered for nature conservation, with protected areas across Europe and in Scotland. They clearly work. It is alarming to have what appears to be quite an open-ended piece of legislation that relates to something so important and precious.

The other issue that I have heard debated is that, where the powers exist for that flexibility, there is not consistent guidance on their use. I look to Jamie Whittle on this, but you can designate for a particular species within a protected area if, for example, that species has moved out because of climate change. There is no point in trying to hold on to a species that will not stay there because its climate envelope has gone.

The flexibility is there, but the debate seems to be around the extent to which that flexibility is already used and, therefore, around the necessity for this legislative change.

The Convener: Before Jamie Whittle comes in, I will ask my next question, because it relates to this point directly. It is about environmental safeguards or other limitations on the powers that are currently in the draft bill. Do we need to protect certain core aspects of regimes from being amended in secondary legislation? That ties in with some of the responses that we have just heard. Jamie, that might be one for you.

Jamie Whittle: I echo the comments about the importance of rigorously considering any changes and consulting on them.

As a general comment, I would say that environmental impact assessment law is particularly complex and particularly intricate when you get into the drafting. It is important for a variety of reasons, not least because it gives clear guidance to developers if they are looking to take forward a project, and for environmental protection in and of itself and ensuring that things are done properly. One almost gets into the idea of looking at an engine and starting to tweak certain parts. It is about making sure that what is done allows everything to work together.

On the bigger picture of EIA law, it is terribly important that changes are consulted on. One has to bear in mind, too, that an element of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 looks to keep us in step with Europe, for a variety of reasons, so it is about ensuring that consistency of approach. Tinkering is potentially dangerous here and it needs to be thought through thoroughly.

Tim Eagle: This is important. There are deep concerns, and you have legal concerns. Have you thought about what we could do in the bill? How do we protect what we have but retain the ability to enhance that? Do we need a code of practice, or should we have a more expansive provision in the bill to deal with the issue?

Jamie Whittle: The principle of updating, realigning and adjusting to a degree, particularly post-Brexit, and ensuring that the modifications allow everything to work, is understood. The issue arises where the bill goes further than that. If there is seen to be a need to do something far more transformative than that, the purpose needs to be understood.

The EIA system has been going for 40-plus years as our main focus in Europe and the UK when we look at developments. It is a radical thing to start to pull that apart.

There are proposals south of the border for potential changes and maybe moving away from the EIA approach, so it is important to link what Scotland does with what England is doing. However, there is a difference between the minor mechanical tweaks and the more wholesale changes.

Professor McCracken: We have got to the stage in proceedings where my lips start moving while my brain is still trying to formulate what I will say in response to your question.

From the perspective of the text in the bill, some of the rationale that has been set out for wanting to make the changes or to have the powers is to get into a situation in which you might have not a designated area but a renewable energy proposal and a designation around what happens there.

The bill has arisen primarily from the biodiversity strategy and the need for the biodiversity strategy to be much more effective across Scotland. Climate change elements are already mainstreamed, as we have mentioned. A variety of legislation is already out there. The powers in the bill are extraordinarily broad—they could be used for good or they could be used for ill; for example, to deprioritise biodiversity over action on climate change or to deprioritise biodiversity and action on climate change over something else.

Therefore, safeguards will be required. Two potential safeguards spring to mind, which could be included in the bill more forcibly. Biodiversity should be given priority or even higher priority—Jamie Whittle might be more familiar with examples from down south—and/or something should be included in the bill that provides that there is a power to make changes provided that there is no adverse impact on, for example, the Scottish Government's ability to maintain and enhance the requirements under the habitats regulations. There are various ways to do it, and I am not as familiar with the legal side of things, but, as it stands at the minute, it is open ended. Some additional constraints could and should be put into the bill.

The Convener: Is the general feeling at the moment that the scope of the powers that a future Government could bring in via secondary legislation has no limit and that the bill should expressly provide for safeguards to limit those powers or to protect certain core elements of what we have now?

Professor McCracken: Yes.

Professor Scott: Yes.

Professor Park: Yes. The powers are broad and open to interpretation.

Professor Brooker: One of the questions that asked for a written response was whether we

agree with the circumstances under which the powers will be implemented, or something like that. The examples given range from being able to submit an EIA in PDF form to enabling large-scale renewables in the North Sea, and everything in between. Those examples illustrate the potential breadth of the impact of the changes. It is hard to agree with them, because it is unclear what they will be.

Professor Park: I have one more point to make in relation to your question about what we could do instead. Again, I have no legal training but it is my understanding that we could, at least for the next seven years, use the 2021 act. A section in it allows us to keep pace with the EU, even though we have withdrawn from the EU.

Jamie Whittle: I have one other point to make. Renewables were mentioned. There is a purposive gap in the bill, which does not deal with the EIA regulations that relate to large wind farms and power lines. The legislation is the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017. That gap is mentioned in the policy memorandum, and the reason, as I understand it, given for that aspect not being featured is that electricity is a devolved matter. However, decisions on large-scale wind farms, for example, are made by Scottish ministers, and the regulations help to inform what comes before ministers.

As part of the analysis on that gap, I therefore question whether it is appropriate to skip that aspect. When one comes to look at climate change and biodiversity, some of the most contentious EIA developments—ones that have gone through the courts, for example—relate to wind farms rather than to some of the other areas that are touched on.

The Convener: We will certainly come to a question that focuses on that area.

On safeguards, the bill does not have a non-regression provision. Does that need to be included? Why has it not been included?

Professor Park: It does need to be included, and I do not know why it has not been included. From memory, the policy memorandum says that it is about flexibility, which makes me worried. We absolutely need a non-regression clause.

Jamie Whittle: The policy memorandum points out that the 2021 act says that any legislation introduced by ministers and in certain other circumstances must accord with five core environmental principles, including the precautionary principle. The policy memorandum mentions that that provision is felt to be a safeguard and that those areas will have in-built protection.

The Convener: David, you are saying that you do not want to come in on that, as it has been covered. The next question is from Mark Ruskell.

11:30

Mark Ruskell: I would like to go into a little bit more detail in this area. You will be aware that section 3 of the bill spells out the purposes for which ministers might use powers to amend both the EIA legislation and the habitats regulations. As you have already alluded to, the purposes, which are covered in sections 3(a) to 3(f), are pretty extensive, and I want to ask about a couple of them.

The purpose that is set out in section 3(b), which you have already touched on, is

“to facilitate progress toward any statutory target relating to the environment, climate or biodiversity that applies in Scotland ... including, in particular ... net zero”.

I am interested in getting some more thoughts on that, particularly in relation to the way that the habitats regulations currently operate, because I understand that a public interest test can be applied in that regard. I am interested in your thoughts generally on that purpose and on how the habitats regulations interpret other existential environmental concerns, such as climate change, and how that public interest test works. Does it work, or is there a case for reform? Is there an inherent conflict with what Governments are trying to do in relation to climate and nature?

Jamie Whittle: The public interest test that you are referring to is sometimes known as the IROPI test. That stands for irreversible—no, wait. Sorry—it will come back to me in a second, or Professor Colin Reid might be able to help me out. Essentially, it is almost like a last line of defence as part of the habitat appraisal when assessing whether a proposed development will have an unacceptable adverse impact on a protected area. Under certain tests, the development may be permitted, but you are at the last line of defence when you get to that test. The development will have gone through a number of hurdles and is probably in the realms of judicial review when that decision is taken. It applies at that sensitive and late stage in the process. So, there is a public interest element, but it is the last line of defence in a way.

Mark Ruskell: Does that assessment process work? There is an assessment of whether there is an alternative, and then there is an assessment of whether an impact can be mitigated. After that, as you say, you get down to the question of whether it is still in the public interest that the development should go ahead. Is that working? Clearly, the bill gives ministers the opportunity to try something different. I am coming back to your earlier point. Is

there a need to change this bit of the law? I am interested in your thoughts on that.

Jamie Whittle: I should have had this at the forefront of my mind, but IROPI stands for imperative reasons of overriding public interest.

Ultimately, it probably comes down to the ministers making the final decision, although there might be reasons why a local authority may decide instead. However, when you get into that territory, public authorities also have protection in relation to what the courts sometimes call planning judgments. From a scrutiny point of view, it is difficult for a member of the public or another interested party to challenge that decision without going to the length of a Court of Session case.

Mark Ruskell: Okay, but this is not a bill about environmental governance; it does not touch on environmental courts or other routes to justice. There is nothing in the bill on that subject—there are no powers in it around that.

Jamie Whittle: No, nothing that I read changes the position.

Mark Ruskell: Does anyone else have thoughts on section 3(b)?

Professor Brooker: Yes. On the question of whether things such as the habitats directives place some kind of limitation on the ability to deliver other environmental goals, certainly for the terrestrial systems in Scotland—I look to colleagues on the panel to confirm this—I am not sensing that that is a major issue that is discussed regularly.

The challenges for the implementation of some of the habitats regulations in Scotland are around particular species in particular locations. It is a case-by-case issue. Perhaps we need some flexibility to de-designate, but, as I said, there is some uncertainty around the guidance on whether you need to change the law to do that or whether there already is sufficient flexibility. That is currently unclear to me, but, as I said, I do not sense, on a terrestrial front, that the regulations are seen as a huge impingement on progress towards other environmental goals. In fact, they should be helping to restore things such as peatlands and so on.

Mark Ruskell: So, people are working within the constraints that designation provides.

Professor Brooker: Certainly, that is my feeling.

Professor Scott: From the point of view of the marine world, when you look at the maps, you see 30 or 40 per cent of the North Sea being covered in wind farms. The sheer scale of that causes tension. The developments have run out of mitigation and are running out of compensation,

and they are up against a wall because of those laws. They cannot expand further without something changing.

There is tension around the fact that, if we do not do things to deal with climate change, the biodiversity crisis will only get worse. We know that climate change is the worst enemy at the moment, but we do not have the scientific evidence to give us complete clarity about the cumulative effects of that level of offshore wind development and that amount of energy being taken out of the oceans. That creates a massive tension.

As scientists, we are asked right now to say which element is worse and which is better, but we cannot say that, as we do not have that information. That is why I say, as we have all agreed before, that caution is important here. Changing everything is not necessarily the way to approach this. The system has come to a breaking point at which we say that developments will not be allowed to go in unless they take this public override. We are at that moment now.

Mark Ruskell: That is an option, so ministers could decide—

Professor Scott: It is an option, but then we get conflict, and, as soon as we get that conflict, we will slow everything down. People quite reasonably realise that we do not want to get into that conflict-type situation and that, although it is better for people to have more power to do something different, changing everything and getting rid of our gold-plated environmental laws is possibly not the right way to do it. Again, however, that is just a personal opinion.

Professor Park: I agree with that completely.

Mark Ruskell: The purpose in section 3(c) is to “ensure consistency or compatibility with other legal regimes”.

You have mentioned some of the changes in other parts of the UK, with environmental outcome reports and so on. Do you have thoughts about that purpose? Is that a good purpose for changing things right now?

Professor Park: Given how it is worded, it could potentially be interpreted as allowing for a standardisation with English or UK legislation, regardless of whether that means weakening our approach to nature conservation. Again, the non-regression clause could help to ameliorate that. We should be strengthening our nature conservation laws, not potentially weakening them because our neighbours south of the border have done so.

Mark Ruskell: So, is the concern about the breadth of that consistency? It could be about

having submissions in PDF format or it could be about a fundamental reform.

Professor Park: Yes.

Professor McCracken: Both of those aspects of environmental protection are devolved. I cannot remember the question from earlier exactly, but the outputs that arise are important and we might need some level of consistency with what is happening elsewhere in the UK. However, I do not see that we necessarily need to make marked changes to those two areas of legislation to achieve that.

The Convener: The UK Energy Act 2023 already allows Scottish ministers to amend certain parts of the habitats regulations. That is in recognition of the fact that we need to develop offshore wind farms at pace and at scale, but it also affects other activities that are associated with grid connections and so on. That sort of ties in with section 3(b) and section 3(c). It is about how we get the balance right.

To give a practical example, we have recently seen a major pylon upgrade from Glenlee to Kendoon—the Tongland upgrade. There were about 1,000 objections to that—nobody was in favour of the upgrade. It went to public inquiry, and the reporter suggested that the impact of the development on biodiversity and landscape was unacceptable. However, the Scottish ministers decided that the benefits of protecting the security of the electricity supply overrode all of that, much to the disappointment of campaigners. I believe that that development will potentially go to judicial review.

Will the new legislation—section 3(b) in particular—make it easier for the Government to do that and justify potentially damaging biodiversity and landscapes? Is it likely to make it easier for them to go—as we say in here—at pace and at the scale required? Again, the issue is about protections.

Professor McCracken: I will defer to Jamie Whittle, but it would appear so.

Jamie Whittle: There are two parts to the issue. I may answer this more in relation to the EIA regulations, as that might be slightly easier. A developer will carry out an EIA, which is a report of its assessment of the impacts of a development. It is then for ministers or a reporter at the planning and environmental appeals division of the Scottish Government or a local authority to apply the various policy tests, such as those around the national planning framework, to decide whether a proposal is in order. With regard to the EIA regulations, the issue is more about what needs to be in those assessments.

I probably need to think through the issues around the habitats regulations a bit further. The issue involves either putting things in that need to be assessed or withdrawing the application, but, ultimately, ministers or a decision-making body will decide. I do not necessarily see that, in itself, as a change. The question concerns making sure that the assessment that is done is robust and proportionate and that it enables people to ensure that the development will be in the right place.

The Convener: On the question of whether something is robust and proportionate, does the bill make it easier for the Government to justify disregarding concerns that are raised in the EIA? Even if, at the next step, a reporter agrees that the impact is unacceptable, does it allow the Government more flexibility to say that the development's impact is proportionate? I hope that what I am trying to say makes sense. Should campaigners who are concerned about the impact of new energy infrastructure be worried that the legislation will make it easier for the Government to disregard EIAs?

Jamie Whittle: I suggest that there is an inherent risk of that. Going back to my primary point in this session, the Law Society strongly recommends that there is robust consultation in relation to any amendments that are brought forward.

Professor Park: I do not feel hugely qualified to answer your question, but the fact that net zero is raised in the policy memorandum exactly speaks to what you have said.

Emma Harper: On the back of that, I am thinking about the convener's example of a pylon replacement project and the wider stakeholder engagement provisions in the bill. I will go back to my earlier questions about parliamentary scrutiny in part 1 of the bill. I know that the stakeholder engagement aims to ensure a collaborative approach to achieving nature recovery targets by consulting with a wide range of groups, including land managers, estates, NGOs and various partners, as well as the local authority, which might already have local place plans in development or even being delivered. Does the bill make provision to include the requirement for stakeholder consultation and agreement? I suppose that that goes back to what the convener was asking about. Does the bill mean that the Government can decide to overrule?

Jamie Whittle: An integral part of environmental impact assessment is the principle known as public participation. That is one of the three pillars of the United Nations Aarhus convention, which was introduced into EIA law in Europe and came across to Scotland and trickled down into the various forms that we have here. That thrust of public participation is integral to how

EIA mechanisms operate. Were that not to form a part of an EIA regime, the regime would be weakened significantly. It would not have that public scrutiny. That would also raise significant questions about access to justice at the front end of a proposed development. I had not read part 2 specifically in light of thinking about public participation, but, again, if that could be amended, it would cause significant concern.

11:45

Emma Harper: I have had conversations outwith the committee about the challenges of space and the competition between building houses, pylons and wind turbines and planting trees. People complain to me a lot about battery storage, for instance. They ask, "Why are we putting in battery storage where we should be growing grass to feed cattle?"

Thinking about how the bill supports parliamentary scrutiny and stakeholder engagement, are there enough protections to make sure that we consider everything when it comes to environmental impact assessments? The bill is about supporting nature recovery and biodiversity, but all these other spatial asks are going on as well.

Professor Scott: Earlier, someone mentioned "bottom up". If people on the ground—you just mentioned many groups; the fishing industry is the same—are not brought in and consulted with as part of the public participation, it will lead to more conflict and will slow things down. The whole purpose of the bill is to give powers to speed things up, but if it does not have public participation it will do the exact opposite.

The Convener: Should the bill reflect the capacity or the lack of it within some of the public bodies that need to be involved in the process? For example, Emma and others have touched on the current race for onshore as well as offshore renewables, but the capacity within local authorities to look at and review those environmental impact assessments is a massive issue. Some local authorities with the bulk of the wind farm applications have only a part-time biodiversity officer.

Should something within the bill ensure capacity within the whole chain of the EIA process to deal with it adequately? At the moment, local authorities are not able to deal with that process and applications are automatically passed to the energy consents unit to decide. That effectively bypasses some of the scrutiny and some of the local democracy. Do we need something in the bill that ensures that the process is fit for purpose and that there is capacity to deliver the right outcomes, particularly on planning applications?

Jamie Whittle: My primary comment is that dealing with the energy consents unit and that whole chapter of EIA regulation does not feature in the bill at all. Electricity works under section 36 of the Electricity Act 1989 and 50-megawatt-plus wind farms and high-voltage power lines under section 37 of that act are not covered, for the reasons given in the policy memorandum.

EIAs are a challenge to the workload of planning officers and, indeed, to the staff of the energy consents unit. They are also a real challenge for the Government and local government. EIAs are voluminous, technical reports. They get into high levels of technical appendices that can be challenging to interpret. Nevertheless, that is the process that has been used over time.

Done properly, EIAs have been shown to work. The EIA should be an iterative journey. Rather than just trying to shoehorn a development into a particular place, if an EIA is done properly and scientists engage to inform a developer, the idea is to come out with the right development in the right place that fits with the wider nest of the Scottish land strategy and the national planning framework. If you follow the process, it can work. One comes into trouble when shortcuts are made.

The Convener: I suppose that the process can work, but the evidence right now is that it does not, because a huge number of applications bypass a whole part of that scrutiny—the local authority part—and go straight to the energy consents unit, which nobody knows about. It is a secret department within the Government. It is incredibly difficult to find out how that decision-making process works. The EIA process might be there but, if we cannot deliver it, is it fit for purpose? That is my query.

Professor Brooker: I want to say something about capacity, but I will first go back to the target topics, if that is okay. When we discussed the specificity of the spend that is needed for Environmental Standards Scotland to play its part as the regulator and the monitoring body, we did not mention the huge amount of work that there is to do to pull the data together to feed into Environmental Standards Scotland. It is critical that that is also resourced. Biodiversity monitoring in Scotland has done a lot on the back of a lot of volunteer work over time, and we have always struggled to get enough data to look in the round at Scottish biodiversity in all its different aspects.

One thing that I feel is missing is clarity around supporting the provision of data to Environmental Standards Scotland with the investment that is needed. In some cases, we have the data, as we have said already, but in others it will be a job of work to pull it together. These are essential aspects of biodiversity that we should be monitoring, but we need to make that investment.

Perhaps some of the sense that I got about, let us say, the caution about suggesting some of the target topics was the worry about how on earth we would resource both developing and then delivering the indicators that we need. Those agencies that will be tasked with that work need support to do what is necessary to provide the data for Environmental Standards Scotland.

The Convener: How realistic is that?

Professor Brooker: As I said earlier, I cannot comment on whether the money would be provided. As to whether there is the technology and the knowledge to develop those indicators, we have a lot of new options and a lot of new data out there, and we are in a much better place to do it now, but it needs resourcing and investment. We have struggled for years because we have done it on an ad-hoc basis through volunteer efforts. Those efforts have been valiant and they have highlighted the problems that we have, but we need to invest properly now.

The Convener: This question might be one for Jamie. Does the bill need to address the inadequacies, the lack of resourcing and whatever? Again, I want to go back to local authorities. Often, the energy consents unit will put on obligations or planning conditions to address issues that are raised in an EIA, but the obligation to monitor whether the mitigations, monitoring or whatever have been put in place fall back on the local authority, which does not have the resources to do that.

Whether it is testing water quality or counting to make sure that a number of crested newts have been relocated or whatever, do we need a provision in the bill to ensure that any statutory obligations or constraints that are put on planning can be monitored and mitigated by—in many cases—the local authority?

Professor Scott: The depletion of the marine directorate is a real issue here. The capacity loss there is unimaginable. Recently, a lot of people with experience have also gone into the development industries. I do not know whether it is a joke, but a lot of developers have talked about putting money in a pot to pay these people double their salaries so that they can keep them in the job long enough to know the process. It is dire in the entirety of the marine directorate. I know that the Scottish Government is also looking at the issue, but it is a bottleneck.

Jamie Whittle: To answer your question, convener, if one were to take that step of looking to resource support, I wonder whether that would take us more into the world of planning and planning legislation. Again, this is not focused on large wind farms, although for some reason I have large wind farms in my mind when discussing this

because they seem to come up the most in the work that I do, but with other planning it would be a question of amending the Town and Country Planning (Scotland) Act 1997 and that wider regime in order to resource things.

Professor McCracken: It is not my area, but I have been sitting here quietly contemplating your question about whether we should use a new bill to alter something already in existence that is proving not to work effectively. That does not sit comfortably with me. As we said earlier, before you change something, you should work out where the constraints are and whether you can deal with those constraints within the confines of the current legislation or funding stream, or whatever it might be. It does not sit comfortably with me to think about using the bill to do something that the existing legislation should tackle directly.

The Convener: I suppose that the big question requires a yes or a no. Does the bill address everything that needs to be addressed, or should we be looking at a consolidation bill that pulls everything together? That would be far easier to follow in order to understand where the obligations lie. Was this a missed opportunity? Should we have had a consolidation bill, or should we look for the Government delivering that over a certain timeframe?

Professor McCracken: Are you asking directly about part 2 of the bill?

The Convener: Yes.

Professor McCracken: I do not know enough about the legislative aspects of it, but you already have the tone and the tenor from us. The current proposals are confusing and, more importantly, concerning.

Professor Park: I completely agree with that, but we are all broadly in favour of part 1 and the statutory targets, and I would hate it if any of our concerns about part 2 endangered the enactment of part 1, which is really, really needed.

Jamie Whittle: In part 2, it would help enormously if there was clarity as to what exactly is needed. If there is a germ of an idea at the moment about what mechanical changes need to be made, rather than almost setting it up as a framework, being able to tee it up so that one can make those changes would be a lot clearer.

The Convener: That brings us to the end of our session. Thank you all very much for your time. It is much appreciated. As often happens, the discussion has raised more questions than answers, but we appreciate your time and commitment.

11:57

Meeting continued in private until 12:24.

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