



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 28 May 2025

Session 6



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CONTENTS

	Col.
SUBORDINATE LEGISLATION	1
Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Order 2025 [Draft]	1
NATURAL ENVIRONMENT (SCOTLAND) BILL: STAGE 1	17

RURAL AFFAIRS AND ISLANDS COMMITTEE

18th 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:

Annie Breaden (Crown Estate Scotland)
Brendan Callaghan (Scottish Forestry)
Alex Flucker (Scottish Environment Protection Agency)
Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP) (Committee Substitute)
Alan Hunt (Environmental Standards Scotland)
Neil Langhorn (Environmental Standards Scotland)
Dr Katherine Leys (NatureScot)
Ivan McKee (Minister for Public Finance)
Joe Triscott (Scottish Government)
Dr Chris Tuckett (Joint Nature Conservation Committee)
Mercedes Villalba (North East Scotland) (Lab)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 28 May 2025

[The Convener opened the meeting at 09:15]

Subordinate Legislation

Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Order 2025 [Draft]

The Convener (Finlay Carson): Good morning, and welcome to the 18th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, I ask members to ensure that electronic devices are switched to silent. We have received apologies from Emma Roddick, and I welcome Christine Grahame, who is attending as a substitute member for items 1 and 2.

The first item on the agenda is further consideration of the draft Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Order 2025. We took oral evidence on the order in our meeting on 14 May and subsequently wrote to local authorities and the Scottish Environment Protection Agency for further information. Their responses are set out in the clerk's note.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP) (Committee Substitute): Due to the nature of the business, which is marine fish farming, I declare an interest as the convener of the cross-party group on animal welfare. I think that that is appropriate.

The Convener: Thank you. I welcome to the meeting Ivan McKee, the Minister for Public Finance, and Joseph Triscott, who is the aquaculture development policy lead in the Scottish Government. I ask Ivan McKee to make an opening statement; we will then ask questions of the policy lead.

Sorry, minister—there is no sound.

The Minister for Public Finance (Ivan McKee): That is us unmuted now. Can you hear me?

The Convener: Yes—that is fine. Go ahead.

Ivan McKee: Good morning, convener and committee. Thank you for the opportunity to appear in front of you this morning, and thank you for your understanding in allowing that to happen virtually.

I want to take the opportunity to briefly outline the aim and purpose of this Scottish statutory instrument. The order provides a technical update to existing marine planning zones to deliver on principles that are already established under the Town and Country Planning (Scotland) Act 1997. In 2007, the definition of “development” in the 1997 act was amended to include fish and shellfish farming out to 12 nautical miles. Any proposed marine fish or shellfish farm located between zero and 12 nautical miles requires planning permission from the relevant local planning authority. However, the Town and Country Planning (Marine Fish Farming) (Scotland) Order 2007 only designated Scotland's marine planning zones out to 3 nautical miles, primarily as a result of the extent of the powers used at that time to designate marine planning zones.

In practice, that has resulted in a legislative gap, because there is no designated planning authority to which a developer may submit an application for a farm located between 3 and 12 nautical miles. In recent years, there has been increasing interest in the ability of fish farming businesses to move further from the coast into more dynamic high-dispersal regions of the marine environment, with developments in technology making farms in that region feasible. Such technology has already allowed businesses to locate farms outside of sheltered lochs into more exposed locations. That type of development has the potential to reduce environmental interactions and to support fish health and welfare in line with the aims of our vision for sustainable aquaculture. There is also interest from the shellfish farming sector in exploring opportunities to site farms further from the coast, including co-location with other marine developments such as renewable energy installations. The planning process for fish and shellfish farming in the zero to 3 nautical miles space is already well understood by businesses, regulators and other stakeholders.

It is, therefore, the intention of the provision to resolve the gap in the planning regulations by extending the marine planning zones out to 12 nautical miles to ensure a consistent approach to the appropriate assessment of any proposed developments within the zero-to-12 nautical miles zone in Scotland. The provision aligns with the Scottish Government's commitment to improve the aquaculture regulatory system as outlined in our vision for sustainable aquaculture and our programme for government.

To ensure transparency and fairness, we engaged with stakeholders and the wider public in consultation on the proposals to extend marine planning zones out to 12 nautical miles and on illustrative interactive maps that outline the extended zones. Responses were carefully

considered and informed the progression of today's provision.

In closing the legislative gap, we can demonstrate that Scotland supports the sustainable development of salmon farming in Scotland and the important role that it plays in supporting employment, with 2,300 jobs supported directly and more than 10,000 roles in the broader supply chains, many of which are skilled and provide average annual incomes well above national and regional averages. I am confident that the enactment of the provision will provide certainty to businesses and stimulate investment in Scotland while offering reassurance to other stakeholders that the regulatory process is consistent and robust.

The Convener: Thank you, minister. I appreciate your opening statement. We move to questions now, and I will kick off. The question is for Joseph Triscott, who is the aquaculture development policy lead in the Government. In our evidence session, we heard stakeholders raise concerns about the unknowns of the impacts on the environment and animal welfare of salmon farms that could be located beyond 3 nautical miles. Following our salmon inquiry, the committee recommended that research be done to look at the impacts on those factors and asked the Government to do some additional work. Do you consider the evidence base to be good enough to support offshore fish and shellfish farms, or is the instrument a little bit premature?

Joe Triscott (Scottish Government): Good morning, convener. Thank you for inviting me here. The evidence base is, in essence, that the regulatory framework outlines what evidence needs to be supplied by developers to satisfy regulators that a consent be put in place. There is wider research looking at high-dispersal environments by research institutions in Scotland and those further abroad, but it is the role of the regulators to consider the evidence as provided by the developer.

As the minister outlined, there are already farms that have moved from sheltered loch systems into quite dispersive and high-energy locations. Our most exposed site is 1 nautical mile from the coast, so there has already been an assessment of new farms operating in more dispersive environments. Whether developers are looking at locating a farm at 2, 3 or 5 nautical miles from the coast, the questions are whether that location is suitable for farming to occur and whether the technology is suitable to operate in that environment. You might have dispersive high-wave-height areas in an existing marine planning zone, as you would have beyond 3 nautical miles. In essence, what we are trying to do is give developers the opportunity to consider the full

scope—outlined in the regulations as going out to 12 nautical miles—and decide where is best to operate.

Rhoda Grant (Highlands and Islands) (Lab): Alongside that, there are obviously benefits to being in areas where there is greater dispersal. I was in the Faroe Islands recently, where they were quite clear that that could help with issues such as microjellyfish and sea lice. However, they were also clear that it could lead to more escapes, because the waters are more energetic. Is having more escapes a reasonable trade-off, because the farms are further out to sea so, especially with salmon farming, the fish are less likely to interact with wild fish?

Joe Triscott: It comes back to the point of developers needing to ensure not only that the locations in which they want to operate are suitable for good performance but that their equipment and technology is able to hold up in those conditions. Containment is a material consideration for planners in the national planning framework 4, so developers must provide evidence that they have assessed the environment; they must have the data on how fast the currents are, what wave heights are like and the direction of clearing winds; and they need the evidence from the attestations of manufacturers that their equipment is fit for purpose. It is already essential that that is carried out. We have seen farms moving from beyond sheltered lochs into more exposed areas around the small isles and the like. That risk is considered through planning and, if the evidence is not considered sufficient, that makes getting planning consent from the relevant local authority more challenging.

The Convener: Is there not a role for the Government in initiating or facilitating research so that, when farms are potentially sited further offshore, it is not a case of learning on the job? They would know how the cages should be built and they would consider fish welfare, and it would not be trial and error. It is an opportunity for the Government and industry to get it right from the start rather than a case of dipping your finger in and seeing what happens. Should there not be more research before we allow the farms to operate? At the moment, that appears to happen on the basis of trial and error.

Joe Triscott: There is a growing evidence base from the fact that farms and equipment are being developed that can already go into quite exposed locations. There is academic research into what sort of moorings are best suited for that, and those are being established. In your evidence session two weeks ago, Iain Berrill from Salmon Scotland said that they are not looking to go really far out, that it would be a gradual process, that they are learning as they go and that it is about the

development of technology. That work is on-going, and there might not be great value in the Scottish Government commissioning extra research.

In the current marine planning zones that go out to 3 nautical miles, there are already some very exposed regions, especially around more isolated islands such as Fair Isle and North Rona, which are way out, yet you could get a planning application and apply for a consent there at the moment. It is about building consistency.

Mark Ruskell (Mid Scotland and Fife) (Green): Can I get some clarity on our current system or current lack of system for planning? There is a planning system out to 3 nautical miles. There is no planning system for fish farms beyond 3 nautical miles, but, if you were an innovative developer and you wanted to try to get a permission to put something beyond 3 nautical miles, which competent authority would you go to? Is that the marine directorate?

Joe Triscott: There is a planning system in place out to 12 nautical miles. The Town and Country Planning (Scotland) Act 1997 identifies marine fish farming as a development out to 12 nautical miles, so a fish farm would require planning permission under the regulations of that act. It is merely the fact that there is no designated authority beyond 3 nautical miles.

As the minister said, when fish and shellfish farming first came under planning, in 2007, the boundaries were set to 3 nautical miles. That was because the act that was used to do that at the time—the 1997 act—went out to 3 nautical miles only; that was as far as it could go. The powers that we are using today under the 1997 act were introduced to that act a couple of years later. There was no scope at the time to go further, so it was not addressed.

The planning process is there; it is just about identifying the right people to consider an application. At the moment, planning permission is required but there is no defined authority to which you can apply, so it is a bit of a limbo situation.

Mark Ruskell: Is there a route for developing any of those fish farms? If a fish farm developer comes to you and says that they would like to try it, notwithstanding the fact that the Town and Country Planning (Scotland) Act 1997 has effectively not been implemented beyond 3 nautical miles, what is the route for that? Could they not just go to the marine directorate and ask it for a licence?

09:30

Joe Triscott: The marine directorate is not designated as the planning authority to consult on the Town and Country Planning (Scotland) Act

1997. They could conceivably approach Scottish ministers directly and ask whether they would consider a special development order, but that is really for big infrastructure projects, so it would not be appropriate for that form of development—*[Interruption.]*

Apologies. I will go on mute for a moment. There is a fire alarm test in the background.

Mark Ruskell: It seems to have passed. Have any developers come to the Scottish Government saying that they would like to push ahead with a development and asking it to grant them a special development order or any other kind of permission that would allow the developers to do it as a trial?

Joe Triscott: I apologise for that fire alarm—it has passed now.

No one has come forward to say that they want to apply now, but we have certainly had interest—*[Interruption.]*

The Convener: It is a very thorough fire alarm test by the sound of it, but we are patient. Go ahead, Joe.

Joe Triscott: Thank you. Apologies again.

There has been interest from developers, who have asked us how consenting would work, but nobody has come forward to say that they want to do something immediately and to ask how they would do it. At various aquaculture conferences over the past several years, however, people have asked how, if they had the technology that was suitable for the environment, they would go about the development in practice. That is the kind of conversation that we have had.

Mark Ruskell: Let us turn to an area where there is a regulatory gap because SEPA's work applies only up to 3 nautical miles out. How will that regulatory gap be closed ahead of any planning applications that could come through for developments beyond 3 nautical miles?

Joe Triscott: The programme for government commits us to clarifying the consenting process for developments from 3 to 12 nautical miles out. Addressing the planning gap is one aspect of that, and the other is the regulation of discharges.

The difference is that there is an existing mechanism for the latter. Someone can seek a marine licence to regulate discharges. That is the marine directorate's responsibility, and SEPA is a statutory consultee in that process. We acknowledge entirely that SEPA is the expert in that space. It has the resources and knowledge, and it has been working in the zero-to-3-nautical-miles space for so long that it is best placed to carry out that function. We are working with SEPA to understand how that process might best be implemented. However, if a farm is to operate, it

must have all relevant consents in place to get a lease from Crown Estate Scotland. A developer could have a planning application in place but, until it had an appropriate discharge consent and authorisation from the fish health inspectorate, it would not be able to operate. Everything has to be in place.

We are clarifying the consenting process. That is the first aspect that we have worked on, and we are currently in discussions with SEPA to clarify the process for regulating discharges. Alongside the intention behind the planning SSI that is in front of you today, we intend to be as consistent as possible in the regulatory standards and processes for developments between zero and 12 nautical miles out, and the intention is to deliver those by the end of the current parliamentary session.

Mark Ruskell: To go back to my original question, will the commencement of regulations to extend SEPA's powers align with the decision on any planning application that is made under the regulations, should they be approved?

Joe Triscott: There are two separate licences for the same development, but they operate slightly independently of each other, although we are trying to align that process at the pre-application stages. All those consents must be in place for a farm to operate. We do not foresee a developer wishing to apply until the regulatory framework is understood and they are confident, having put their time and effort into identifying a potential site, that there is a route to the development going ahead at the end of the process.

The other point is that the discharge of waste licence applies only to fish farms and not to shellfish farms, so applying the provision to shellfish farms would mean that we would be able to start considering where there is an opportunity to develop them, and they would not require a separate licence.

We are working to clarify the whole process for developments between 3 and 12 nautical miles out, and we are making it as consistent as we can. A mechanism is in place, but we are in discussions with SEPA and we will advise ministers shortly on the best routes to formalising that. We will then consult on that as required, probably later this year.

Mark Ruskell: I am curious about why the work has not been done already. Parliament has been considering the draft Environmental Authorisations (Scotland) Amendment Regulations 2025. I suppose that, in an ideal world, those regulations would have extended SEPA's powers and you would have been able to tell us today that the environmental regulations were in place and you

now wanted to bring in a planning system. Instead, I am hearing that you are trying to apply a planning system beyond 3 nautical miles, and to make that live, but that environmental regulations are coming some way down the track, so people must hold off putting in applications until there is certainty. That feels quite disjointed.

I am not asking you, as an official, to comment on those choices, but it feels as though there was an opportunity to make the update and bring in a consistent system with the environmental authorisations amendment regulations.

Joe Triscott: We have been looking, in the round, at the consenting process for developments 3 to 12 nautical miles out for about 12 months, and the major gap that we identified was the planning gap. Another regulatory mechanism could be used for discharges under the marine licence, for which SEPA is a statutory consultee, but the gap in planning regulations fundamentally prevents people from seeking a planning application—we are aware of that. Work is being done on an integrated framework, and we will present that to ministers as an opportunity. There are also other options under the marine licence and potentially delegating specific functions to SEPA. It is a question of which fits best, and we will be having that conversation.

From our side, the other aspect of it is, frankly, the resource that is needed to produce SSIs, potentially, and to run public consultations. We saw the gap in the planning system as being quite simple to resolve. There are a few more options for us to consider in thinking about how we regulate discharges and SEPA's role in that, and we are working through those. The intention is that those matters will also be resolved by the end of the current parliamentary session.

As I say, in relation to the planning issue, there is also the potential to develop shellfish farms beyond 3 nautical miles. I do not think that there is much interest in doing that here, but we have seen such development on the south coast of England, and what is going on down there is quite interesting. That opportunity is simply not available in Scotland at the moment, but this planning SSI would resolve that.

Beatrice Wishart (Shetland Islands) (LD): Good morning, Joe. In a previous evidence session, we learned that Salmon Scotland described the industry's plan to locate offshore as incremental. I know, from an answer to a written question that I submitted earlier this year and from a report in my local newspaper, *The Shetland Times*, that the Cabinet Secretary for Rural Affairs, Land Reform and Islands visited the world's first offshore salmon farm in Norway in 2023 and that the Scottish Government has had on-going discussions about proposals for offshore sites,

including three off Shetland. Are you able to expand on those proposals and how advanced they are?

Joe Triscott: The developer in question approached the Scottish Government following Ms Gougeon's visit to Ocean Farm 1 and it asked how consenting works in practice in Scotland, not having been involved in it previously, and how it works specifically in the 3-to-12-nautical-miles space. We made the developer aware of the current lie of the land, how the process works and what we intend to do in creating a consistent framework for developments between zero and 12 nautical miles out. I understand that the developer has already met with local communities and aquaculture regulators such as Shetland planners, NatureScot and the fish health inspectorate, to understand how the process works in Scotland. I cannot say any more on the scope of the proposals, as that detail is not with us.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): As we know, the marine environment is very busy. How will the Scottish Government ensure that commercial fishers and other marine stakeholders are consulted at an early stage of proposals, to avoid any potential spatial conflicts of the kind that we heard about in our evidence-taking session with the Scottish Fishermen's Federation?

Joe Triscott: Obviously, this is a huge topic for not just aquaculture but all forms of marine development, particularly because of the impact on marine users and fishers. That impact is a consideration for the planning authorities themselves, and they will generally consult with local fishing organisations.

We encourage engagement between developers and fishers at the earliest opportunity. In our consenting task group pre-application pilots, which have been running in Shetland and the Highlands, we are trying to improve mechanisms to allow that engagement to happen as early as possible and with as much evidence as possible being provided to interested parties, including fishers.

Certainly, developers are encouraged to speak to as many interested parties and stakeholders as possible as early in the process as they can, because that avoids potential issues further down the line when it comes to formal application. Moreover, planners have to consider the effects on other marine users, and fishers are able to indicate formally through the planning process whether they support or object to planning permission being given.

In our consultation on this, we received responses from six sea fisheries organisations. The Scottish Fishermen's Federation, which you

heard from, did not agree with the proposals, but four others, including a number of regional inshore fisheries groups, did and acknowledged that the planning system is probably the best place for them to put forward their views on any proposed development.

Elena Whitham: Do you think that there will be sufficient synergy between the national marine plan and any of these decisions that are being taken locally?

Joe Triscott: The national marine plan 2 will contain specific aquaculture policies, but we have a range of spatial policies in place for aquaculture, and local authorities will have in place their own local development plans, which might be more specific to them. Shetland, for example, might say that certain areas are not best suited to aquaculture because of the amount of marine traffic there or whatever. The issue will be addressed in the national marine plan 2, but there are a range of other spatial guidance tools that should be directing aquaculture to the best places.

Elena Whitham: Thanks.

Beatrice Wishart: The Scottish Fishermen's Federation has been reported in *The Shetland Times* as saying that the question is not just whether local authorities have the resources to undertake the task of delivering planning in the 3-to-12-nautical-miles zone but whether the expertise is available, too. Are you able to comment on that?

Joe Triscott: In their work on the zero-to-3-nautical-miles zone, local authorities are already relying on a lot of expertise that does not come directly from them.

There are a number of statutory consultees in the planning process. For example, NatureScot will give advice on the impact on natural heritage and wildlife, and SEPA and the marine directorate are consultees, too. Moreover, as navigation is a material consideration in planning, planners will always go out to the Northern Lighthouse Board to understand how farms in a given location should be lit and marked so that they are safe in terms of their impact on other marine users.

We think that the process used for the zero-to-3-nautical-miles zone is transferable to the 3-to-12-nautical miles zone. There could be some very exposed locations within 3 nautical miles that might get larger, offshore-style farms, and this is simply about extending the ability for developers to consider where the best opportunities might be. Indeed, there might be less conflict if you go slightly further out than 3 nautical miles and are less constrained by inshore waters.

Rhoda Grant: I want to ask about regional marine planning. How will the cumulative impacts

of developments across marine planning boundaries be dealt with? If we are talking about the area between Cape Wrath and the Mull of Kintyre, for instance, there will be three councils involved.

09:45

Joe Triscott: Regional marine plans fall under the Marine (Scotland) Act 2010, and the intention is that plans will be developed for each of the 11 marine regions, to give them locational guidance for different activities. As far as local authorities are concerned, the 23 coastal authorities consider such matters within their own jurisdiction, but they must give consideration to regional marine plans if they fall within one. At the moment, there are no plans in place, but Orkney and Shetland are progressing down that route, and they will have to have due regard to any policies in the regional marine plan within which they fall when it comes to considering aquaculture applications.

Rhoda Grant: That approach seems easier for Orkney and Shetland, as their sea spaces are unique to them, whereas I think that conflicts will arise in, say, the Minch, where there are several local authorities involved. How will they work together? Do they have the resources to be able to plan?

Joe Triscott: Ultimately, resource is a challenging issue for local authorities across the piece when it comes to planning, but there are fees for aquaculture applications, and they are scaled according to the size of the development. The process for assessing a farm 2.5 or 3.5 nautical miles from the shore will be very similar: proposals will have to go through environmental impact assessments—and habitats regulations appraisals, if required; and they must have due regard to the national marine plan, local development plans and any regional marine plans into which they fall. If we find, down the line, that there is a significant increase in resource associated with more exposed developments, we can consider having another stage of fees to support that.

There is also wider work going on through the investing in planning programme. I should apologise, as it is not my direct area, but I understand that a lot of work has been going on to encourage more planners into the profession and to upskill existing planners, and a planning hub has been established in the Scottish Government, which at the moment is focusing on hydrogen developments. Depending on how it works, it might, further down the line, provide a good test case for how extra resource can be provided to certain sectors. We believe that planners should have the ability to consider these types of development.

Moreover, we do not foresee a huge number of these developments coming forward in the short to medium term. They will require significant investment, as the technology to put them in place might be there but only so many businesses have the supply chain to develop them. I am not sensing that we will get five or 10 additional developments in the medium term, and it is most likely that they will happen in places where aquaculture already exists, such as Shetland, Orkney, the Western Isles and Argyll and Bute. As for the Minch, it is already pretty much covered by the marine planning zones between the Western Isles and Highland: they abut each other as it is, and you could submit an application there now, if you chose to do so.

Rhoda Grant: Thank you.

The Convener: We have heard that some of the planning applications are quite complex and resource intensive, but we also heard from one local authority that believed that, as you have stated, they will not all come along at once but will start to come in gradually and slowly.

However, it is our understanding that the applications are not processed on a full cost recovery basis, which might put financial strains on local authorities. If more applications were to come forward, would the Scottish Government increase fees to allow for full cost recovery or, at least, put in place some mechanism to ensure full cost recovery?

Joe Triscott: We can come back to you with more detail on that from planning colleagues, but my understanding is that there has recently been an increase in fees in line with inflation, and the wider investing in planning programme is looking to ensure that fees keep pace with costs. If there were to be a significant change in how such developments are assessed, we could consider another tranche of fee structure, but, as I have said, the fees are currently scaled according to the size of the development.

The intention of fees, as they stand, is to work towards cost recovery for local authorities. Things are not quite meeting up for them in some cases, but I think that they would say the same about some existing fish farms. Again, it is a matter not of how far offshore you are but of where you are—for example, whether you are right beside a priority marine feature, what sort of wildlife interactions there are, the complexity of the environment that you are working in and so on. Some locations that are looked at can be very complex. It might be the case that, the further out you go, some of those considerations become less challenging and simpler to assess.

The Convener: Thank you. I call Beatrice Wishart.

Beatrice Wishart: This is probably more of a comment than a question, but if you feel that you can answer, Joe, that would be helpful.

In the summary of the responses to the consultation, the Scottish Government, in its response on the impact on the fisheries sector, states that the extension will allow fisheries interests to engage in the planning process, ensuring that their concerns are considered. That does not sound very reassuring to me, somehow. However, it might have been better for the minister to answer that question.

Joe Triscott: It is a wider issue across all planning, isn't it? Some interests will not be supportive of a certain development, while others will. At the end of the day, a decision will be made, and some people will be happy with it and some will not, but it is important that those views can be made known and considered fully by the relevant planning authority. As we discussed earlier, we are encouraging aquaculture developers to engage with local fishers and other marine users as early as possible when they scope out locations, to ensure that, even before they get to the planning application stage, they have already had those discussions. Indeed, we have had some examples of the location or orientation of sites being varied on the basis of advice from fishers. It is all about good engagement between the parties.

Beatrice Wishart: Okay.

The Convener: I call Elena Whitham.

Elena Whitham: I have already asked my question, convener.

The Convener: I beg your pardon—it was Emma Harper I was supposed to be going to. I am getting my Emmas and Elenas mixed up this morning.

Emma Harper (South Scotland) (SNP): We are all Es on this committee, aren't we? *[Laughter.]*

Good morning, Joe. I have a quick question for you. You mentioned engaging with aquaculture developers. Does the Government help to support the development of marine planning as a profession, to ensure that adequate resources and expertise are out there? It is a complex matter. I know that different organisations have proposals for salmon farms, and now we are proposing an extension to 12 nautical miles. What does the Scottish Government do to support further marine planning?

Joe Triscott: Are you talking about increasing upskilling for marine planning and encouraging more people into that space?

Emma Harper: Yes.

Joe Triscott: I know that the question was put to me, but Mr McKee might have more to say on the wider planning process and the investing in planning programme. I do not know whether he wants to come in on that.

Ivan McKee: I am very happy to answer that question more generally.

Marine planning is a very specific aspect of the planning system, but, in general, we are taking significant steps to put more resources in through the work that we have done on fees. Of course, we cannot ring fence that money at the local authority level. The Scottish Government is also working to increase the number of planners significantly by trebling the number of bursaries it has put in place to support those coming into the planning profession.

Moreover, the Government has, for the first time, recruited a total of 18 apprentice planners, who will be trained through the process, and that will help to increase the number of people who are coming into the profession not just at the early stage of their careers but mid-career. Extensive work is being done to support a number of young planners who are coming through and to encourage others to come into the profession.

Emma Harper: Okay.

The Convener: I call Evelyn Tweed.

Evelyn Tweed (Stirling) (SNP): You will be pleased to hear that this will be the last question in this session.

How will the Scottish Government consider the strategic needs of port infrastructure, to support potentially larger offshore salmon farms? We have heard quite a lot of concerns about decommissioning. Can you comment on that?

Joe Triscott: On the question of decommissioning, you will find that, where planning permissions are granted, there are conditions on decommissioning and how it should be undertaken. There are also conditions relating to the general maintenance of farms. For example, if anything comes adrift, you must resolve that issue.

As for ports and harbours infrastructure, the impacts on onshore-based facilities are a material consideration in planning and need to be considered. I am not close to this issue, so I might need to come back to you with further information on it, but I believe that there is, through Transport Scotland, a wider ports strategy in place.

Ultimately, though, if there is more potential for marine development and marine investment, that will carry over into port development, too. In many instances, ports are privately owned, but we have seen big developments in Stornoway, based on

what people are expecting from future renewables and aquaculture developments, and that is leading to improvements to deep-water ports, more tourism and the rest of it.

Primarily, though, this is all based on people saying, "We foresee this development happening, so we are making investments." Therefore, a driver for this is giving businesses confidence by telling them, "You can invest in more innovative developments in the marine space in Scotland, not just in aquaculture but in renewables and other forms of development, too." Hopefully, that should encourage private investment from the ports themselves and potentially support funding from elsewhere.

Evelyn Tweed: If you did get more information on that, it would be good if you could come back to us with it.

Joe Triscott: I will see what I can find out.

Evelyn Tweed: That would be great. Thank you.

The Convener: That brings our questions to an end. Thank you very much, Mr Triscott, for joining us this morning.

We now move to formal consideration of the instrument. I invite the minister to move motion S6M-17363.

Motion moved,

That the Rural Affairs and Islands Committee recommends that the Town and Country Planning (Marine Fish Farming) (Scotland) Amendment Order 2025 [draft] be approved.—[*Ivan McKee*]

The Convener: Does any member wish to debate the motion?

As no member wishes to debate the motion, is the committee content to recommend approval of the instrument?

Members: No.

The Convener: There will be a division.

For

Carson, Finlay (Galloway and West Dumfries) (Con)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Tweed, Evelyn (Stirling) (SNP)
Whitham, Elena (Carrick, Cumnock and Doon Valley) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

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

The Convener: The result of the division is: For 7, Against 1, Abstentions 0.

Motion agreed to.

The Convener: The committee will report on the outcome of the instrument in due course, and I invite the committee to delegate authority to me, as convener, to finalise the report for publication. Are we agreed?

Members indicated agreement.

The Convener: That concludes consideration of the instrument, and I thank the minister for attending today's meeting.

I suspend the meeting for 10 minutes, to allow a changeover of witnesses.

09:58

Meeting suspended.

10:06

On resuming—

Natural Environment (Scotland) Bill: Stage 1

The Convener: Welcome back. The next item on the agenda is further evidence on the Natural Environment (Scotland) Bill. Our first panel of witnesses represents public bodies that will be tasked with helping the Scottish ministers to achieve the targets set in part 1 of the bill or that have a role in the environmental impact assessments or habitats regulations that are covered by part 2 of the bill.

I welcome Mercedes Villalba MSP to this session. I also welcome Annie Breaden from Crown Estate Scotland, Brendan Callaghan from Scottish Forestry, Alex Flucker from the Scottish Environment Protection Agency, Dr Katherine Leys from NatureScot and Dr Chris Tuckett from the Joint Nature Conservation Committee. We have allocated about 90 minutes for the discussion. There are quite a few questions to go through, so I ask for succinct questions and answers. You will not need to operate your microphones, as we have a gentleman here who will do it for you.

I will kick off with a nice, straightforward question. Scotland has consistently failed to meet its biodiversity targets or halt nature decline. Why do you think that statutory biodiversity targets can make a difference and have an impact on that decline?

Annie Breaden (Crown Estate Scotland): Good morning, everyone. From our perspective, statutory targets will focus attention on particular priority areas and should be a positive way of harnessing public sector focus and delivery on them. We all know that biodiversity is very complex, so understanding what the priorities are and all getting behind them can be very helpful for Crown Estate Scotland. If the statutory targets are set, we will focus our attention on them and work with partners to deliver them. We are therefore very supportive of them.

Alex Flucker (Scottish Environment Protection Agency): Good morning. I echo and agree with Annie Breaden's points. We think that statutory targets are the right thing to have in Scotland. Partners, bodies and agencies have been involved in this endeavour for the past quarter of a century but have not been delivering the outcomes or the policy intent that is required. We think that statutory targets are good, but a range of mechanisms for support and governance need to be in place to drive that work forward. The targets will provide teeth and will galvanise the

actions of the many partners, agencies and public bodies that are in the space to help to deliver biodiversity. No single organisation has the full levers, controls or funding, so a partnership not just across public bodies but across landowners and industries is critical. Therefore, we think that statutory targets are really helpful.

Dr Katherine Leys (NatureScot): Thank you for inviting NatureScot to participate today. Good morning, everybody. I agree very much with what Alex Flucker said. We know that biodiversity has declined despite everybody's best efforts, but we are also aware that climate change has become a real thing for everybody and that the statutory targets have effectively galvanised action around it. I think that now is the time to galvanise actions around biodiversity.

The Convener: We have had statutory targets for climate change, but we have had to review and reset them, so surely it is more about the policies than about the targets. In the absence of any policies, will targets have the teeth to deliver?

Dr Leys: We have a new biodiversity strategy that has a number of actions supporting it, so we have some weight for biodiversity. I understand that the climate change targets were very ambitious. Although we are setting ambitious targets here—at least, we hope to set them here—I do not think that it is outwith our ability to deliver them, even with our existing legislation.

Brendan Callaghan (Scottish Forestry): A number of the challenges, particularly in relation to biodiversity, are very long-term challenges. Landscape-scale changes require concerted effort, and there will inevitably be slow progress over a long period. In that context, you need a clear policy. One of the things that target setting does is force the reconciling of the challenges and the resources, which affects the pace that will be possible.

In the context of forestry, the condition of native woodlands, which is very much affected by deer management, can really be addressed only on a landscape scale. Action to address invasive and non-native species, such as rhododendron in Atlantic rainforest, can be taken on an ownership scale, but, if action is not being taken in the wider landscape, any progress is undermined. The level of investment that is required for such action means that it is a long-term commitment—it cannot be done over the period of a Parliament, for example.

Dr Chris Tuckett (Joint Nature Conservation Committee): I apologise for not being there in person. I would have loved to be with you. Thank you for the invitation. I work for the Joint Nature Conservation Committee, and our role is to provide advice on nature and conservation across

the United Kingdom, so we are advising all the Governments of the UK, which includes working really closely with NatureScot.

From our perspective, statutory targets are important. As others on the panel have said, we are experiencing biodiversity and climate crises. We need to focus on delivering to address those crises, and having statutory targets that bring focus and accountability is very important. As was also said, we need the policies to back them up. Having statutory targets in isolation is pretty pointless without the policy and the support. However, having statutory targets could, in itself, help with that and potentially, I suspect, with securing investment to help to achieve the targets. Therefore, we are supportive of going in that direction.

The Convener: Thank you.

Mark Ruskell: On the subject of targets, I would like to ask you about the topic areas that were chosen for targets and whether you think that those are adequate. I will go into a bit of detail here. NatureScot said in evidence that

“the targets will need to be set carefully to avoid the potential of diverting attention from wider biodiversity improvements.”

Can you expand a little on what the concern is there?

Dr Leys: We are aware that, occasionally, having targets focuses action only on achieving the targets. The Scottish biodiversity strategy and action plan is based on an expectation that biodiversity more widely will be enhanced and improved, so we would not want the targets to focus attention on just one bit. We all need to be aware of the need to improve biodiversity more widely, and we mentioned that merely to avoid a perverse incentive being given.

Mark Ruskell: Thanks.

There have also been concerns about the target species in that there is a focus on threatened species. There might be concerns about species that are in decline and the need for wider restoration. Do you have any thoughts on the topic areas and the species that get selected for the targets?

10:15

Dr Leys: In our written evidence, we say that we would potentially want the targets to be widened to include more species, because quite a lot of effort is already put into saving threatened species but not the wider biodiversity. I was speaking to a colleague about that yesterday. Very few people in Scotland will ever see a twinflower, but if half the population of bluebells disappeared, everybody would notice, and the same would be

true of things like garden birds. It would be indicative of a much wider crisis. Therefore, we would want to be able to review species more generally and report on that situation rather than just on the endangered ones, which we would expect to be addressed through existing bodies such as the Scottish national reintroduction forum.

Mark Ruskell: Chris Tuckett, do you want to come in? I saw you nodding.

Dr Tuckett: Yes. I agree whole-heartedly with Katherine Leys about the need to make the species targeting reasonably broad. In the work that we do at the JNCC, the focus on rare species means that you might be trying to find handfuls or individuals, which is very difficult from a monitoring point of view. Having a wider focus on species and habitats could be a lot more useful and worth while. Rare species are important, of course, as Katherine Leys said, but we find that focusing on those as targets is problematic.

Also, when looking at the interplay between targets for climate and nature, we see the possibility of a disparity arising between the two instead of their being aligned. It is very important that we ensure that what we are doing for nature also delivers for climate, and visa versa, but we are not seeing much of that elsewhere. It is an area that we think needs to be progressed across the UK, and integrating climate and nature when setting the targets would be very helpful.

Mark Ruskell: Do you mean climate mitigation, or are you thinking more about how species adapt?

Dr Tuckett: I mean both adaptation and mitigation. Nature is helping to mitigate the impacts of climate change, through peat bogs and carbon sequestration, but it also needs to adapt. So, looking at the habs regs, which we will come on to, there will be impacts. Some of the sites and species that we have at the moment, regrettably, cannot stay as they are or cannot be where they are in the face of climate change. That is just a fact that is built in at the moment. Thinking about how we set the targets for biodiversity in the light of the impact of climate change is important, but it is also very much about the role that nature plays in mitigating climate change.

Mark Ruskell: That leads me to a final question in this area, which is about the target topic of ecosystem health. It would be good to get your views on whether the Government and agencies have been doing enough work on that. Is it defined enough that we can set targets for it, or is it an area in which work may come forward in the future? Is it clear how targets for ecosystem health could be set, monitored and worked on?

Dr Leys: We are currently working on ecosystem health, particularly in relation to the

red-listing of ecosystems, but I anticipate that the work that we do on that could be trialled more widely. We are at the beginning of that development.

Mark Ruskell: Could you give us an example of that?

Dr Leys: Some of the work that we are doing at the moment focuses on machair, because it does not exist as an entity elsewhere. We are looking at what we need in order to support machair, and to support everybody who lives in areas with machair, and the species and habitats that we would expect to be part of that. That is just one example.

The Convener: What are Brendan Callaghan's views on how Scottish forestry or commercial forestry in general might evidence ecosystem health now and how that might be improved in the future? We have heard in previous evidence sessions about the lack of data on ecosystems and biodiversity in forestry. How could a target on ecosystem health affect Scottish forestry?

Brendan Callaghan: There is a reasonable amount of research on the biodiversity of mixed woodlands, including commercial woodlands, and the story is quite good, although it is not often widely promoted. A range of species and species groups do pretty well in mixed woodland.

We need to bear it in mind that, under the new UK forestry standard, which will gradually apply to all managed woodlands in Scotland, only a maximum of 65 per cent can be of one species, and 10 to 20 per cent of the land in each woodland will be managed for biodiversity. That figure is relatively high for intensively managed land.

I would not have concerns about expanding that approach. All forestry regulatory processes now involve gathering and considering environmental data, and there is very careful assessment of that in relation to proposals for afforestation or land use change. The processes are changing and evolving, and we are trying to do that work well. We would welcome a greater focus on ecosystem health.

The Convener: How might that fit in? We hear that the forestry sector is continually having to review its practice, and the approach is never particularly long term. You talked about the UK forestry standard, which is reviewed regularly. The Scottish Government might come in to give targets for ecosystem health, or national parks might come in and tell the sector that it needs to achieve X, Y and Z.

Does the bill give you comfort that you might have a more stable target that aims to be achieved over a longer period than five years, which is what the period looks like under the UK forestry

standard? Will that give your industry issues with planning for the future or make that easier?

Brendan Callaghan: Potentially, the bill will make planning easier, because we would expect targets that are set out in secondary legislation not to change as frequently, although Parliament and ministers could elect to change them. I think that the bill will bring a focus to existing priorities and policies rather than establish anything that is radically new. Forestry practitioners are very much required, under the UK forestry standard, to take account of other habitats and important species in developing forestry plans.

Despite the challenges of evolving policy and standards, forestry—of all sectors—inherently involves a very long-term process. That creates some certainty because, once trees are in the ground, they will often be there for 30 to 50 years. However, it creates some uncertainty, because although the convention is to produce 20-year plans that set out how the trees will be managed, when they will be felled if they are in a felling regime and what they will be replaced with, plans are reviewed every 10 years, and well over 1 million hectares of forest in Scotland are covered by that approach.

There is a reasonable balance that involves adapting and evolving to take account of changing science, changing policy and the changing climate change context, and practitioners generally having approvals for 10 years ahead and knowing that, when they review a plan, they are sighted on the changes that have occurred over those 10 years.

The Convener: I will bring in Dr Tuckett.

Dr Tuckett: I had to put my hand up to speak about ecosystem health, which we absolutely think is a difficult area to get right. The JNCC provides advice on measuring the conservation status of protected areas. That is one way of looking at ecosystem health, but a bit more work is needed to be able to look at the problem in the round and at the environment holistically. Ecosystem health is about making sure that you have the right assemblage of biodiversity, that it is working and that you have the hierarchies that you should have. Ecosystem health is a really important area.

Emma Harper: I have a quick supplementary for Brendan Callaghan. When he previously appeared before the committee, I raised the issue that ground-nesting birds are among the species that are declining across Europe. I am interested in how the bill will interact with or support regional land use partnerships and their development. Does it support the ability to focus on wider ecosystems? We know that trees and woodland are a great place for predators, which can affect ground nests and the bird population. I am interested in how the bill interacts and intersects

with and supports regional land use partnerships when we are looking at whole ecosystem habitats.

Brendan Callaghan: It is still relatively early days in the development of regional land use partnerships. Some have made significant progress, but they are not everywhere yet. If we had clear statutory targets—whether on the extent or condition of habitats or on particularly important species—that would become one factor that fed into any analysis at a regional level. It would also feed in case by case and subtly change the relative value of any impact that was being picked up. For example, a statutory target on the protection of curlew, which is sensitive to predator shadow and changing land use, would affect decisions that a regional land use partnership might take, whether that was case by case or in relation to the zoning and prioritisation process.

Mark Ruskell: Should the bill explicitly reflect the commitments that Scotland has signed up to in the global biodiversity framework? Should there be a 2030 target and a 2045 target in the bill, or does the bill implicitly deliver on that? I will bring in Chris Tuckett.

Dr Tuckett: Our role is to report on progress UK-wide against the global biodiversity targets. We do that through working with the country's conservation bodies and producing annual global biodiversity indicators.

In working on the environment, we go from the local impact of action that is taken to the national level and right up to the international dimension—the impact runs right through. It would be helpful to mention in the bill that relationship and the importance of work at the local, national, UK and international levels, because it is an important driver for what we are doing, and it is important for Scotland and the UK to be seen to be doing their bit globally against the global biodiversity framework.

Referring to that in the bill would be powerful. It would add momentum and importance and frame one of the reasons for such action. Of course, there are local reasons, too—other drivers are much more local—but such an approach is vital internationally. Scotland has species and habitats that are internationally relevant.

Mark Ruskell: How will that aim be achieved? Should the bill reflect the 2030 and 2045 targets or reference the international commitments? I am interested in how that should be reflected in the bill.

10:30

Dr Tuckett: That is for the Parliament to consider, but the bill should at least reference the relationship to the global biodiversity framework.

You might not need to align the dates, and you could choose to take a more overt approach, but at least specifying the relationship would be good.

Mark Ruskell: Are there other views on that?

Annie Breden: I agree. We know that species do not respect borders particularly well—that applies especially in the marine environment and especially to birds. Taking a global approach is welcome, and Scotland demonstrably supporting that would be valuable.

Alex Flucker: We support that. You can probably see that we infer from how the bill is drafted and from the work that is coming through from the programme advisory group that the group wants such alignment. In the global biodiversity framework, there are four long-term goals to 2050, which include maintaining, enhancing and restoring both the area of natural ecosystems and the species that are under threat from human-induced extinction. Those two things relate directly to two of the three topics or targets that will be set under the bill. There is a willingness and an intent to have the alignment to the international global targets. That would be a good thing to have in place, and I do not see why we would not do it.

I will come back to Mark Ruskell's earlier question on a concern from previous meetings about a risk from the bill focusing just on threatened species. Given the rate of climate change, if we focus just on threatened species, we will be behind the curve. At a previous evidence session, academics who are largely on the PAG said that we need to look at common species and species that are on the pathway to being in decline, as well as those that are threatened. Our understanding of the policy memorandum is that provisions on that seem to be in place.

Dr Leys: We would be pleased to see the global biodiversity framework mentioned and to see more explicit links between that and the targets.

Elena Whitham: The committee has heard in evidence that the biodiversity duty on public bodies could be strengthened and that there is a lack of accountability for the reporting duty. How do you interpret and apply the biodiversity duty in your organisations? Could a strengthened duty support you to do more to tackle the nature crisis? What can be learned from your organisations' experiences of fulfilling the duty? I ask Alex Flucker to give SEPA's perspective on that first.

Alex Flucker: We believe that having clear, measurable targets on biodiversity and the delivery plan galvanises the work that is needed. Reporting is important. We currently do a number of pieces of reporting towards the Scottish biodiversity strategy. If reporting timeframes are to be set in the bill, they should avoid unnecessary duplication of other reporting requirements. An

example is ecosystem health, which we covered earlier. SEPA reports on the ecosystem health of Scotland's waters through the river basin management planning, which is now in its third cycle. It would be useful to make sure that the framework and reporting cycle align with existing capabilities so that we have continuity of our tracking and reporting.

Elena Whitham: Dr Leys, will you comment from NatureScot's perspective?

Dr Leys: We collate everybody's biodiversity duties and then provide reports to the Government and the Scottish Parliament about the delivery, so we wear two hats in relation to the duty. Biodiversity is our business. It is key to what we do daily and it helps to support some of our targets, such as the global biodiversity targets. We provide data on what we are achieving and we also provide the reporting element. We would be very happy to see that strengthened so that biodiversity also becomes key to other organisations. Those who do not have biodiversity as their key focus are trying to balance a load of other duties, and it is sometimes less of a focus for them than we would like it to be.

Elena Whitham: How do the Crown Estate and Scottish Forestry deliver on the biodiversity duty?

Annie Breaden: Every three years we produce a statutory report that sets out all the strands of biodiversity work that we have undertaken in those years, whether that is direct work on the estate, work in partnership to deliver other activities or research that we have funded on biodiversity. There are probably opportunities for closer working, perhaps with NatureScot colleagues, in relation to feedback on the report and some additional direction for us. In a way, the statutory targets would support that.

We do what we think is best for biodiversity on our estate and we work in partnership with a lot of expert organisations. Ultimately, however, to deliver the most for Scotland, there is scope for more partnership working and support from organisations such as NatureScot for organisations such as ours. We do not have teams of biodiversity specialists, so we need to source that support from others. Being able to access Government agency support on that would be really welcome.

Brendan Callaghan: We are similar to NatureScot in that biodiversity is a key aspect of what Scottish Forestry does. We are both the policy lead for the Scottish Government and the delivery lead on native woodlands and some of the challenges around invasive and non-native species. It is a key aspect in how we conduct our regulatory function and also the support function through grants. We are the lead on public funding

for species such as capercaillie, for example, and red squirrel conservation.

It is a valid question. As was said earlier, many bodies have a wider range of functions and biodiversity is just one consideration. That is where having a strengthened duty might have more of an impact. It is a major consideration in everything we do, and we have specialists and leads in different areas of biodiversity as part of our organisational structure.

The Convener: Annie, what happens to the reports that the Crown Estate produces? What actions are carried out on the back of them? Will that change when the bill is enacted?

Annie Breaden: As far as I know, we have never had any feedback on the reports that we submit. We see the reporting as an opportunity for us to collate all the work that we do in the area. It is helpful both internally and externally to be able to communicate that, but I am not aware that we have ever received any feedback or scrutiny. From my perspective, it would be quite helpful to receive that and understand from a Government perspective whether the reporting is what we should be doing. A template is provided for public bodies, and we follow that. It helps us to understand some of the areas where we could perhaps do more. In filling it out, we may realise that there is scope for additional work. However, there is not then a joined-up conversation with, say NatureScot or the Scottish Government about what more we could do.

The Convener: That is quite damning. You have suggested that you do the work but, in effect, the reports then gather dust on a shelf somewhere and there is no change in direction or guidance on how you might change your current management practices.

Annie Breaden: It helps us to understand where we are, but no feedback loop is evidenced. It is not necessarily unusual for that to happen with some of the reports that we need to submit.

The Convener: Okay. Thank you. That brings us quite tidily to the next question, which will be asked by Beatrice Wishart.

Beatrice Wishart: Good morning, panel. What are your views on the wider governance provisions in the bill relating to how targets will be consulted on, reviewed and monitored? Who would like to kick off on that?

Alex Flucker: I will happily go first. We support it. We understand that it is mooted that the PAG will be part of the governance body. We have strategic targets that are set to 2030 and 2045, and we will be tracking those. We feel that they need to be accompanied by indicators that give us a more finite or real-time understanding of how

things are progressing naturally within the governance. It would be useful to have some kind of pragmatic approach, similar to the biodiversity action plan, to see that action is being driven forward on the ground.

There is a suite of activities and governance that we think stem from the strategic spectrum—the overarching targets that we are looking to get from outcomes—right through to tracking the evidence on the ground and the actions that are flowing through from that. We think that the proposal for the PAG to have a role in that is right. We have active engagement with the PAG at CEO level and specialist technical expert level, so we are largely happy with that.

Dr Leys: We are also happy with the proposals. We have been engaged with the PAG through having staff on the PAG and advising the PAG. We also had input into the recommended targets that it came up with, which came to our science advisory committee for peer review. We have been involved in the PAG and the targets, and we are happy to support the proposals.

Dr Tuckett: On the governance and review, it is not for us to say, but what is proposed seems perfectly sensible. Monitoring is a practical matter. You need to ensure that monitoring can be delivered, is resourced and is properly reflecting what the targets are, and you must be clear about whether this is monitoring the species and the ultimate outcome that you want or whether it is a link measure. Pinning down the monitoring will be important not for the bill but for the detail that goes with it. The detail underneath will be really important. There is a whole package of work to be done on how the targets will be reviewed, on the policies that line up with them and on the monitoring that goes with that, but what is in the bill looks pretty sound.

Brendan Callaghan: I have just a brief comment. In a previous role, I helped to set up Environmental Standards Scotland. What was in our minds then was that that was independent of the Scottish ministers, so I am pleased to see that it is in the mix here as a body that could be used to independently review this. It was absolutely in the mind of the board of that organisation when it was being set up that it could perform that function and assist Parliament in the scrutiny of matters such as this, so that seems positive to me.

Emma Harper: I suspect that I may know the answer to this already. You have said that it is complex, and you mentioned the challenges and the wider issues of improving biodiversity, habitats and everything. Do you consider that the bill supports the mainstreaming of biodiversity, including in your own organisations? It sounds like you do, because Brendan Callaghan has just answered the question about Environmental

Standards Scotland. What are your thoughts about supporting the mainstreaming of biodiversity in the bill?

10:45

The Convener: That might be one for Annie Breden, given her response about the reports that she produced. Does there need to be more accountability and legal requirements for the reports? Does the feedback loop that you talked about need to be improved?

Annie Breden: The reports are something that we have to do. However, our act requires us to do further sustainable development and take non-financial values such as economic, social, environmental and wellbeing aspects into account. We are doing that, and we do a lot of work on biodiversity with our tenants on the estate. It is what is in our act that is really driving us. We have the additional public body duty to report on it, but we mainstreamed it to a degree within the organisation because it is in our act rather than because of the reporting requirements that we have. We do a lot, especially the partnership working with other bodies, which helps us to progress some of those duties in an effective way.

Dr Leys: We were pleased to see the targets coming forward, because they reflect the public consultation that went out on the Scottish biodiversity strategy, in which there was widespread public support for statutory targets. There is an element of linking that by way of mainstreaming it.

We also wonder about having targets that reflect the majority of people's access to and enjoyment of nature, because the green infrastructure element does not really come across in the existing targets. We would be interested in seeing things about how people enjoy and engage with nature near where they live, because that would widen people's experience of biodiversity.

Dr Tuckett: On a slightly different tack, mainstreaming is incredibly important. There is a tendency for environment biodiversity to be something that is over there and for others. Apologies if I am wide of the mark here, but I noticed that the bill refers throughout to "the Scottish Ministers" and not to one minister—it does not refer to the minister who is responsible for the environment or the climate or whatever. That is quite powerful in itself in mainstreaming, because it means that all ministers across the Government have some responsibility here—I assume that that is what it means—and that is really important. How that is brought to bear, day in and day out, through policies in those various ministries is important, but the fact that the bill is so broad in itself helps with that mainstreaming

from the outset. Apologies if I have got that wrong, but my understanding is that the bill applies right across the Government and is the responsibility of all ministers.

Alex Flucker: To answer your question, biodiversity tracking, monitoring, reporting and delivering action is what we do. It is in our DNA. On mainstreaming within the organisation, we are there and we are champing at the bit to move further forward. On mainstreaming outside the organisation, I encourage Government decision makers and policymakers to look across the policy landscape, at the sectors and the mechanisms there, and assess whether they are aligned and incentivising the overarching outcomes that we need for Scotland or whether they are disincentivising.

The committee had previous evidence sessions with representatives from the farming sector who were all saying, "We are businessmen and the incentives are important to us." That was echoed again in one of the more recent evidence sessions from academics who followed that through. Looking to the future for things such as the rural payment scheme, they said that there are opportunities to bring incentives to ensure that funding galvanises and mainstreams across many sectors—landowners, forestry, or whoever it may be—to really lean into this, because targets need to be ambitious. The timelines to deliver those are hard, so there must be mainstreaming.

The Convener: Before we move on, I have a question that is still on public bodies' role in meeting targets. In 2018, the Public Audit and Post-legislative Scrutiny Committee conducted an inquiry into compliance with the biodiversity and biodiversity reporting duties on public bodies. The committee suggested that there was a low level of compliance with the reporting duty, and that was closely linked with a lack of compliance with the biodiversity duty as well. The evidence suggested that there was a lack of awareness of what actions public bodies could and should be taking to comply with the biodiversity duty. Is that still the situation? I suppose that that is a question for NatureScot. Is this still an issue, and is it something that we need to seriously address going forward, or are we at a stage, now, where that information is being provided to public bodies to ensure that they understand their obligations?

Dr Leys: We collate the public body reporting, and the response is never 100 per cent. There are always some public bodies that do not report, so perhaps it is not as complete as we want it to be. We have mechanisms where we are working with biodiversity officers, particularly in local authorities and the national parks, to help them understand and to support what they are doing on the ground. We are providing some support to people who are

engaged in biodiversity, but that is a relatively small percentage of the whole—one or two officers in a large local authority, for example. There is definitely an opportunity to widen the engagement and understanding of the responsibilities of that duty.

The Convener: Is it your view that a lack of understanding or awareness is the issue in the non-compliance, even though it is a relatively low number?

Dr Leys: There will be some lack of understanding. There will also be a lack of finance to support the development of the reports. We have also seen in recent years that, if biodiversity officers move on from their local authority, they are not always backfilled and replaced, because of the pressures on local authorities and other public sector bodies.

The Convener: That leads us nicely to a question from Beatrice Wishart.

Beatrice Wishart: Do you expect implications for your organisations from gathering and analysing biodiversity data, flowing from future targets? What will be the resource and capacity implications? Is there a need for broader investment in biodiversity data to support the bill's effectiveness? We have heard in oral evidence a number of times about the need for more investment and capacity in public bodies. I do not know who would like to kick off.

Annie Breaden: We are developing our new corporate plan—we have a draft out for consultation—and one of the key strategic priorities is enhancing nature. That is how the priority is framed, and this is the first time that we have ever been as explicit about our need as an organisation to focus on biodiversity.

One activity that we expect to come with that is properly understanding the baseline condition of our terrestrial landholdings. We are working through the budgets for that in discussion with the Scottish Government about our budget for the corporate plan period. We expect to put revenue funding into that so that we can understand the baseline condition of our estate and seek to enhance it. We are preparing to do that.

Alex Flucker: We are confident that we have the capabilities and capacity to deliver against our current obligations, which I have no doubt will change. That typically happens when we have legislative change—for example, the national planning framework 4 doubled the volume of flood-related planning applications that we deal with per annum.

When we face such things, we look forward and try to forecast, understand and prepare ourselves for how we can deal with them. We have extensive

conversations with partners. We look at how we can bring innovations forward and put efficiencies in place. We are one of the co-funders and developers of the national flow and light detection and ranging programme for terrestrial to understand better what the vegetation looks like, what the biodiversity can look like and what data we can take from that. We use LiDAR in local locations, so we are feeding into the quality assurance of that programme. We are excited to see what will come from that.

We are also exploring other things. There is a fair chance that our work, as you heard in some previous evidence sessions, may go beyond 3 nautical miles in the marine environment. That has implications for how we conduct surveys and carry out our regulatory work, because we do not have the vessels for that. Ships are expensive, so we are working with the marine directorate to strike a corporate agreement to use its fleet under a one-Scotland approach.

We do a lot of work to understand the biodiversity impact on the sea bed from marine pen fish farms. We are developing artificial intelligence techniques to automatically scan the imagery from drones that we use in the sea bed and reduce the time that it takes for our people and staff to analyse such work in laboratories.

Innovation, partnership and public sector reform are fundamental to our ability to move forward and address such things. I have no doubt that greater challenges are to come. We have to prepare, scrutinise and analyse what we need to deliver successfully, and we need to engage with our sponsor teams in the Scottish Government.

Dr Leys: Two elements—biodiversity data and the staff and resources—are inherent in Beatrice Wishart's question. There are significant gaps in biodiversity data. We do not collect a lot of data; we largely support our partners to collect it and we use the data that they collect. We are aware that there will be costs from collecting more data or data that will specifically answer the questions. We have flagged that to the Scottish Government and, in effect, that will be brought out in any financial memorandum for secondary legislation.

We have the staff and resources to deliver the current programme. If the bill assigns us more duties or more requirements for us to report, we will expect that to be reflected in a financial memorandum.

Dr Tuckett: Our position on the data is similar to what Katherine Leys described. We oversee quite a lot of monitoring schemes—on plants, bats, seabirds and so on—that are run by and largely delivered by volunteers. Those schemes keep going, and some of that work feeds through to the UK biodiversity indicators, which I mentioned

earlier. That kind of surveillance happens. We have funding for it, but costs go up, even though a lot of those schemes are voluntary. As with Alex Flucker's organisation, we are looking at innovation and using things such as earth observation to see whether we can do the job more efficiently, effectively and cheaply.

The data is available, but whether it works at the right level to show a change is important. That will depend partly on how the targets are set. The scope of the bill is important, as I am not clear on whether the bill relates to the offshore marine environment. The JNCC has responsibility for advising on the state of nature in the offshore environment—from 12 nautical miles outwards. For Scotland, that is huge and vitally important. If the bill extends that far and if there are offshore targets, that may bring additional requirements. Alex Flucker talked about the cost of survey vessels and booking them in advance. Those costs have gone up hugely in recent years, so that would be an issue.

11:00

The JNCC is looking at the changes in regulation across the countries of the UK, and we are looking for signals about the impact that policy changes are ultimately having on the biodiversity outcome. As well as monitoring and looking at progress against the targets, we could help in showing whether policy levers are working or whether different approaches from other countries of the UK might be more beneficial. We could offer to help by providing an overview of the impact that different policies and pieces of legislation across the UK are having and how that compares with impacts in Scotland.

The Convener: To wrap this up, biodiversity data will be key to the bill's effectiveness—it will be the fundamental basis for measuring everything. Will organisations and public bodies such as yours look at full cost recovery for the work to collect biodiversity data? For example, when Crown Estate Scotland leases the sea bed for fish farms or offshore wind, will it look at licensing that covers the costs of gathering the biodiversity data as base data and improving that over the time of a project? The same question goes for Scottish Forestry or the commercial side of forestry. Should that cost be passed on? If not, how else will such work be funded? It is obvious that there will not be the capacity financially or in resources generally to deliver the biodiversity data that will be needed.

Annie Breaden: When the developers that we lease to are preparing their consent applications, they have to do a huge range of surveys. The data that they need to collect and how that is reported is driven by NatureScot and the marine

directorates, especially for offshore developments. A series of further monitoring work is required throughout the lifetime of developments.

As you may know, Crown Estate Scotland has worked with the Crown Estate over the past couple of years to ensure that the data that our Scottish wind developers initially produce is put into the marine data exchange, where it is made publicly available to anyone who wants to access it. We are not seeking any cost recovery for that; we do not pay developers and they do not pay us, but the data is made available.

The data that is collected through all the different activities—whether they involve public bodies or developers working in the coastal environment or the offshore environment—is all incredibly expensive and difficult to collect. Going forward, we need to ensure that it is in a usable form and that it is not just for the purpose of supporting offshore wind farm development, for example, so that it can have wider uses. That will enable us to use it as efficiently as possible.

Dr Leys: We generally expect developers to submit their data to the National Biodiversity Network. We cannot make them do that, and issues that are commercial in confidence often come into play, but we want the existing mechanisms for holding data to be used where possible.

The Convener: Thank you. Before we finish questions on part 1, does Mercedes Villalba have any questions?

Mercedes Villalba (North East Scotland) (Lab): I have two questions. First, I will go back to target topics, which I know we discussed at the start of the session. The programme advisory group identified seven target topics. We have discussed the three that are being taken forward, but I want to hear your views on investment in biodiversity, which is not being taken forward. Does any of your organisations have a view on the extent to which a statutory target on investment in biodiversity would be useful and help to drive forward the changes that are required?

Annie Breaden: The topic is complex, and the aim would be quite difficult to achieve with statutory targets. The Scottish Government is doing a lot of useful work in relation to the biodiversity investment plan and its market frameworks on trying to bring in private finance to support such work. A lot of the work is in its infancy, although, terrestrially, we have the peatland code and the woodland carbon code.

A range of activities is happening. For example, in the marine environment, the Scottish marine environmental enhancement fund is a really effective way of bringing in private finance from users of the sea. NatureScot and the Scottish

Government use that to fund grants specifically for marine enhancement projects. There are quite a lot of initiatives out there, but it would be difficult to frame that all with a statutory target, especially at this point. I do not think that that is developed enough to benefit from a statutory target.

Mercedes Villalba: That is helpful. Would anyone else like to come in?

Dr Leys: We have attempted to report on investment in biodiversity for the global biodiversity framework, and we have found that an element depends on what you call investment in biodiversity, as Annie Breaden said. Something that is focused on another priority can have biodiversity benefits or disbenefits, and being able to say how much of that money goes to biodiversity is really hard. The uncertainty that is created is one reason why such a target has not come forward.

Mercedes Villalba: Does Dr Tuckett want to contribute?

Dr Tuckett: I support what Katherine Leys just said—the issue is complex. If there was a target on investment in biodiversity, you might spend quite a lot of time trying to figure out what that target should be. The other topics are much more direct, so perhaps they should take precedence. That is not to say that investment in biodiversity is not important—it really is—but to have a target for that might bring perverse incentives.

Mercedes Villalba: Thank you. My second question is about consultation on the targets. The Scottish Government, in evidence to the committee, said that it did not envisage doing any formal public consultation. Based on your organisations experiences of engaging with the public and people who are affected by and living in the environment, what are your views on the need to carry out public consultation on the targets, specifically?

Alex Flucker: In principle, engaging with people who are impacted by policy change at a national or local level is good. It is the right thing to do. SEPA consults regularly on our regulations and our policies. It is important to take on views and understand how best we can take forward delivery. On the action that will be required on the ground, I imagine that it would be useful to engage and consult with local communities and landowners—the people who potentially will be feeding into or enabling change in the environment to bring about better biodiversity so that nature can flourish.

Dr Leys: I agree with Alex Flucker, but we need to be aware that living in and enjoying and appreciating nature and supporting biodiversity improvement is distinct from actually collecting the data. The targets will be governed by data. A lot of

people will have views and experiences that are eminently important and sensible and all the rest of it, but they are not going to go and do any collection. We need to separate collecting the data from wider public engagement. I support the engagement, but I wonder whether the public are the people who will be collecting the data.

Annie Breden: I agree in the sense that data collection should be very science driven. I anticipate that some of the actions that will be required to meet the targets will need to be delivered by land managers, farmers and various other people working and living in Scotland. It is important that what will be asked of those people is consulted on, to make sure that it is sensible and deliverable.

The Convener: Thank you. We will move on to part 2 of the bill, which covers EIA legislation and the habitats regulations.

Rhoda Grant: The bill provides for a new overarching power that would allow the Scottish ministers to modify, by regulations, Scottish environmental impact assessment legislation and the habitats regulations. Is that power required, given the existing delegated powers in this area?

Brendan Callaghan: I have had some input into the bill development process and my understanding is that that power absolutely is required. There are limited circumstances under which existing powers might allow ministers to modify and correct existing EIA regulations, but I think that those powers are limited to correcting errors or where it is identified that regulations are no longer in compliance with the original European Union regulations. My understanding is that this is a replacement power and that, without the provision, it will be very hard, other than through primary legislation, to make any amendments to either the EIA regimes or the habitats regulations.

Rhoda Grant: We have heard evidence to suggest that substantial changes should be made by primary legislation. Can you give us an example of what you think the power would be used for? We have had evidence that they are not needed because there is a huge amount of leeway within the existing regulations to allow us to protect other species, for example. There is a fear that having that power might mean that big changes could be made without proper scrutiny.

Brendan Callaghan: I could certainly give an example.

The Convener: We have also heard that the keeping pace powers cover most of the concerns that you raised in your first response to Rhoda Grant. Is that not the case? Do you want to consider that, along with Rhoda's question?

Brendan Callaghan: Scottish Forestry leads on the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017, so I could give an example or two in that area. As we get cases, either applications or where enforcement is needed, we gain experience and circumstances arise that perhaps were not envisaged when the legislation was originally drafted. That is what has been in our mind, in relation to seeking the power.

For example, the wording of the 2017 regulations says that we may take enforcement action against the person who is committing the act on the land. Our experience is that that has caused difficulties for us because sometimes it is not clear who that person is and the wording does not allow us to issue an enforcement notice directly to, for example, the landowner. An enforcement notice could be just to stop the work, or to carry out remedial works, or to apply for consent. We have powers to require a range of things.

11:15

Looking at the wording of the regulations on who an enforcement notice could be issued to, or enforcement action taken against, is an example of what the power could be used for. Other areas of legislation allow us to take action against either the landowner or the persons who are suspected of taking the action or are responsible for the action. That is an example of something that we do not think that we could address through the keeping pace powers or correcting as a deficiency. It is a specific change, but it is a relatively modest change. Without the new power, such a change would need to be made through primary legislation that was relevant to the subject matter.

Rhoda Grant: How do you get over that at the moment, or do you not? Is that the issue?

Brendan Callaghan: If that situation arises, we are limited in how we can take enforcement action, unless we can directly link the person taking the action on the site to the person who owns the land. An example of the complication that arises is a case that we had in which the ownership was a partnership, so we had to issue a notice to the partnership and to each of the individuals. A further complication was that the land was let to somebody. We found that our enforcement powers were limited. The new power could be used to clarify the responsibilities that landowners have and reduce the risk of challenge should we take appropriate enforcement action, which does not quite fit with the current wording.

Rhoda Grant: Are there other instances where such a power would be required? Given that enforcement is an issue for you, could the bill be amended in such a way as to enable the 2017

regulations to be changed while narrowing the scope of the regulatory power that is being implemented through the bill?

Brendan Callaghan: There are other examples. The forestry regime has been in place since 2017. There have been well over 2,000 screenings and a relatively small number of full EIAs and a few dozen cases of regulatory enforcement, but we have not had cases go to court. We have not had case law and the court has not expressed an opinion on how the regulations have been administered. We are now in a situation in which we have some cases that are in that territory and on which we are getting legal advice that we expect is likely to flag up either areas of deficiency or areas that would benefit from clarity. I could give you some examples, but I cannot forecast the specifics of what is likely to arise out of particular cases. Having lots of legal scrutiny on how the regulations have been used is quite useful in identifying areas of practice that might need to be revised or improved but also areas where the regulations are cumbersome or difficult to administer.

Rhoda Grant: Okay. Does any of the panel have a different view?

Dr Leys: Can I—

The Convener: Before you come in, Dr Leys, I have a question for Brendan Callaghan, who has given us a very technical response—which I must admit went right over my head. It appears to be a massive sledgehammer to crack a tiny nut. You have come up with one example. This is a huge, overarching power and it is still not clear why it is needed to resolve the issue that you described. You have also talked about things that might happen, but I do not think that, as a committee, we find it very easy to pass just-in-case legislation, particularly when that overarching power will be hugely extended. Is it proportionate to take such a power to address that one issue?

Brendan Callaghan: Similar powers have been in place since the EIA forestry regulations were instituted, in 1999, and I think that they have been used twice in that period. I do not think that there is much evidence of overuse. The only formal change to the 1999 forestry regulations was in 2017, when they came to this committee and went through the parliamentary process.

It is about balance. If there is no power for ministers to amend regulations, any minor amendment has to be made through primary legislation. The opportunities for doing that are quite limited, given the parliamentary schedule and the number of bills where it would be appropriate to make those changes. It is about good administration. I know that there has been debate and that stakeholders have expressed

views on the particular arrangements for the regulations and the provisions in them that could adjust that balance, but there is a genuine need to have the flexibility that has existed and the power for the Scottish ministers to make changes relatively efficiently and in a timely way, certainly for EIA regulations, which is my area.

Dr Leys: I wanted to check whether your question was specifically relating to the EIA part of the EIA and habitats regulations bundle. We support changes. It does not make a lot of sense to us to have legislation that we cannot easily amend. Giving the power to change legislation in response to changing technologies, climate change and so on seems sensible to us. How that is done is another question.

Rhoda Grant: The evidence that we had prior to this is that there is flexibility within the regulations as they stand.

Dr Leys: We find some issues with that, but they may well be able to be addressed more specifically than by a general power.

The Convener: That is the problem. The bill is potentially giving a huge power to create more flexibility in areas where we are not sure that flexibility is required. I do not want to put words into Rhoda Grant's mouth, but what flexibility do you have currently and how do you use it? Also, are there areas in which you do not have, but might want, flexibility? I think that, up to now, the only example that we have had from ministers has been to do with the Government's ability to use digitised rather than paper documents. That is the only example that we have had from the bill team. What flexibility do you have at the moment, and what flexibility do you not have that you think this overarching power could deliver to deal with things that exist now, not something that might or might not occur in the future?

Dr Leys: That is why we wanted to check whether it was EIAs or the habitats regulations that we were talking about.

The Convener: Well, it is both.

Dr Leys: Both—okay. That is different.

We would like the powers in relation to the habitats regulations to be brought in. There has been quite a lot of discussion, particularly about regulation 9D of the Conservation (Natural Habitats, &c) Regulations 1994, which apparently gives wider powers, but we do not see that as operating within the existing legislation as such. It is mentioned that the de-designating of special areas of conservation and special protection areas under the habitats regulations can be done, but there is no clarity on how we would do that.

There is also no clarity on how we would change the designated features of sites. For

example, what happens if we have lots of open ground and then trees come in? How do we add in things that are not necessarily features of European legislation but that are, say, features of sites of special scientific interest? That cannot be done at the moment. There are lots of things like that, where conservation objectives would be amended to take account of the reality of climate change, for example, but the flexibility to deal with them does not, from our perspective, currently exist. Others have a different perspective, which I understand they have already represented, but our view is that regulation 9D does not allow us to easily adapt the UK site network, and that provides us with problems.

The Convener: Just on that example, is NatureScot currently utilising the ability to add missing features? On our recent visit to the Cairngorms, we saw birch and willow in some areas of open space. Does NatureScot not have the ability to add missing features without having to be provided with any extensive extra powers?

Dr Leys: The problem with birch woodland, in particular, is that it is an SSSI feature, not a European feature. We cannot add a UK feature to European legislation, and the two things do not match very well at present. That is part of the issue.

The Convener: Okay.

Alex Flucker: I should say that this is definitely not my area of technical expertise, so I will hopefully not be going over people's heads.

As we understand it, the proposal is to keep these standards and for public bodies and statutory consultees to have the framework and the tools to keep up to date with the right standards. Those powers were lost as a result of EU exit. Perhaps different advice has been received with regard to keeping pace, but I do not have sight of that. However, that is a separate matter.

On the principle of maintaining the right standards, SEPA is seeing that, across the landscape and across sectors, a lot of activity is coming along the pipeline that will require EIAs. I am thinking of the pace of change in the energy sector with regard to renewable technologies and, say, pumped storage hydro power, with the updates from the Department for Environment, Food and Rural Affairs on a new cap and floor regime. Those things are driving big investment choices and big planning choices that require EIAs. If we are thinking about a framework for a bill that is looking to protect the environment, increase biodiversity and reverse nature depletion, I would say that EIAs, for example, are important as standard-setting tools that can be used by public bodies to support assessment and to advise

planning bodies when such considerations come through.

Changing habitats regulations could make it harder to deliver some of the biodiversity outcomes that we are seeking. For example, with river basin planning, which makes up nearly 90 per cent of our current commitments under the Scottish biodiversity delivery plans, any change made under regulations that might be proposed under sections 3(a) to 3(f) of the bill that might weaken, or lessen, the focus on habitats could make it harder for us to achieve the outcomes that the Scottish Government wants us to deliver through river basin management planning. Therefore, there are knock-on effects to take into account.

Some of this is very technical, but in principle we are supportive of the Scottish Government seeking to put controls in place and having the toolkit to maintain standards and flex them over time if need be.

The Convener: Thank you. Rhoda, do you have any further questions?

Rhoda Grant: I still have some concerns. I guess that it is our job to ensure that there are checks and balances within Government, but the real concern is that this is just a really wide power. After all, we are making legislation not for this Government but for Governments over the next 20 or 30 years, and the power could be used to cause damage rather than to improve and protect.

11:30

Brendan Callaghan: I can give you another example that has just come to mind. Currently, there is no provision in the forest regime for the Scottish ministers to make a screening opinion of their own volition. Under those provisions, people can ask us to give a screening opinion but, at the moment, if we become aware of somebody planning a project that we think needs to be screened, we cannot proactively look at it, give them a screening opinion and advise them that, for example, their project requires consent. We have to wait until, potentially, they carry out works, and then we take enforcement action against them. Therefore, we would like to use this power to give Scottish ministers the ability to issue a screening opinion of their own volition. That power used to exist, and it exists in some other regimes, but it no longer exists under the current Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017.

The Convener: We move on to questions from Mark Ruskell.

Mark Ruskell: We have covered some of the areas that I wanted to ask about, but I want to go

back to the issue of flexibility when it comes to protected sites and the very narrow potential use of the powers in the bill. Dr Leys, to what extent is NatureScot using the current powers in regulations 9D and 11? I get the impression that there is a reluctance to adjust the site network or make changes that could allow wider landscape-scale restoration. How are you using the existing system to make changes and variations where that makes sense to improve the environment?

Dr Leys: Regulation 11 includes reference to removing entries from the register, although we have no information on how we could do that. There are restrictions on how we could use what seems to be quite a broad power.

Regulation 9D refers to the UK network, and my understanding is that, in effect, a lot of that was established at a time when we were dealing with increasing populations and biodiversity was looking good, so a lot of it aspires towards maintaining numbers, which perhaps we have no real ability to do these days. We can potentially be tasked with favourable conservation status requirements that are incompatible with what is happening on the ground. What we are asked to do is not always what people on the ground want us to do so, in many situations, we are a bit stuck when it comes to delivering stuff on the ground that requires flexibility. That is one of the things that we want to change.

Mark Ruskell: If NatureScot does not know how to apply regulations 9D and 11, should you not ask the Scottish Government how you can adapt the site network to meet the challenges of the natural environment in the 21st century? There are powers that have not been used, and there is a bit of caution. Why can we not just work with existing powers rather than change them?

Dr Leys: We could do that if we received direct guidance from the Scottish Government that it wants us to do that, but we are not in a position to do that ourselves.

Mark Ruskell: One challenge with the bill is that we do not know exactly how the Government will use the powers, so we are all gazing into crystal balls.

Is the guidance on the site network that is available to NatureScot officers on the ground routinely updated? I hear that there is some inconsistency in the way that that is applied, which is causing issues with decisions about particular features that might be allowed to expand to other designated areas.

Dr Leys: We have not routinely been adding European sites since before 2017. We have added some features in some places, but we have not changed the site network. As I mentioned, we do not de-designate stuff, even when the features are

no longer present because of climate change or whatever. For example, if the geese have gone, we are still stuck with the site.

The flexibility that you refer to probably comes in mostly on sites where a feature is obviously gone and is not coming back. In that case, we have to manage the site and the land as it is. We work with owners and occupiers to do that through a sensible and sympathetic mechanism and way forward. However, where features for which the site was designated remain, we are very much bound by the legislation.

Dr Tuckett: I am in two minds about the habitats regulations and environmental impact assessments. The written evidence that we submitted on the issue went both ways. As we have discussed, climate change is happening. As Katherine Leys has just said, on some sites, the features, whether they involve species or habitats, are just not there and they cannot be there, so the ability to adapt the network, take out certain sites and make changes is just a practical thing.

Having said that, the habitats regulations, in particular, are vitally important. They protect the most precious habitats and species, so we alter and amend them at our peril—at least, we should do so with very great caution. We also need to think about the international dimension, as the regulations are important for the global biodiversity framework. Therefore, I am very much in two minds about the changes. There seem to be some practical reasons for them, but, as you said, we need to consider whether there are other ways around the issues.

I also want to make a point about the reasoning behind changes to EIA. The bill refers to those being to “facilitate progress” on “climate or biodiversity” targets. Sometimes, your climate targets and biodiversity targets do not go together. You might be doing something for a climate target that might not be so great for biodiversity. That goes back to the point that we made earlier about needing to bring those things together. If that provision remains, it might be helpful for the bill to say “and” biodiversity targets rather than “or”.

The Convener: That probably takes us on to another question from Mark Ruskell on the current scope of powers in regard to net zero.

Mark Ruskell: It would be useful to have examples of where, practically, you see tension. The Government has said that the consent regime for grid infrastructure is problematic for EIAs. We have the UK Planning and Infrastructure Bill, a legislative consent memorandum for which has been considered by the Net Zero, Energy and Transport Committee this week.

Without going into the huge technicality around that, are the current systems fit for purpose? Is the

overriding public interest test being applied? Are the tensions between net zero and wider protection of biodiversity being resolved in the existing system? I am interested in any reflections on environmental assessments, so pick out of that what you want.

Alex Flucker: That is a tricky question. The current regimes have been in place for some time. Many of us can look back to recent history and consider examples and case points that suggest that outcomes have not been fantastic, particularly with energy infrastructure, which is an area that I am familiar with from my previous career.

The Beaully to Denny power line might strike a chord with many of us. I referred a moment ago to an increasing pipeline of activity for planning considerations, particularly around pumped hydro storage. That is an active issue, and the points that have been made today about the tensions between climate and biodiversity targets are very real in that space. For example, the Beaully to Denny power line enables low-carbon generation. As the energy sector is one of the biggest emitters globally of CO₂ equivalent gases, that line is a big step forward in mitigating climate change, but that type of activity, as well as activities for green technologies such as pumped hydro storage, can have real implications for biodiversity.

It is incredibly hard to step through the trade-offs, tensions and choices on that. There is no clear policy direction or steer. Guidance exists, but it would be incredibly helpful for Scotland to carry out spatial planning to decide on the areas where we will go strongly for improving nature and biodiversity and the areas where we will enable economic development. We need a multilayered approach to how we think about the landscape and where we push the different levers.

Mark Ruskell: Does the example of Beaully to Denny not prove the point that the existing system has worked? I remember the early conversations around Beaully to Denny, when there were concerns about a special protection area for birds near Blackford. That resulted in the line being moved. Clearly, the habitats regulations and the EIA process had a bearing on the development of that project. Does the current system work for industrial development and for nature or are there irreconcilable tensions that require the whole system to be changed?

Alex Flucker: It varies, depending on the infrastructure choices that are in front of you. Looking back on Beaully to Denny, the outcomes have not been disastrous. The tools that were available through EIA and the habitats regulations helped and brought to bear an understanding of and clarity on the issues at hand in that particular case.

With infrastructure choices such as pumped hydro storage—at the moment, there are multiple applications for some of our most prized natural assets such as Loch Lomond—the implications for nature are quite profound. We have not yet tested or got to grips with stepping through those carefully.

Mark Ruskell: Are there any other reflections? I am particularly interested in the imperative reasons of overriding public interest—IROPI—test. Last week, a representative of the Chartered Institute of Ecology and Environmental Management gave an example of the test being applied in relation to a road between, I think, Mallaig and Fort William. Is the current system working well? What changes might we envisage ministers using the powers in the bill for?

Dr Leys: IROPI has been used only four times in Scotland, so the case law is relatively limited. The reality is that there are three tests. One is whether there is any suitable alternative. There is also the imperative and overriding public interest element, as well as the issue of necessary compensation. All those issues have to be considered. For many proposed changes, potentially only one of those tests will be passed. The overriding public interest one might be a goer, but the others might not be. That leaves a real issue for us in enabling potentially difficult projects by pushing them down the IROPI avenue, because we know that there will be elements that cannot be met by the development. That is why we had an issue in the first place with some proposals.

Mark Ruskell: Dr Tuckett, do you have any reflections?

Dr Tuckett: That really is the question. It is about the pressures that we are seeing in our environment now. When you talk about net zero, what immediately springs to mind are the pressures in the marine environment, which are unprecedented. Alex Flucker's point about spatial planning is important. We need to look strategically at what development goes where and what areas are truly precious and should be preserved for the environment and for biodiversity.

I think that the current system works, because it asks the right questions. Equally, we increasingly see a view in England that the process is too slow or might be a barrier to growth and development, and that there might be alternatives. We are right in the crux of that dilemma, and the pressures are huge. For that reason, we must think very carefully about any changes that we make to legislation.

You mentioned the UK Government's Planning and Infrastructure Bill, which is going through Westminster. There is a lot in that about compensation, but the loss of some habitats

cannot be compensated for. I do not know what the right answer is, but we must step carefully when thinking about how we change our legislation, what we do and what balance we have between growth and environment. We need to think long term, because, once some habitats are gone, they will not be there, and they are providing a service to us.

I have not really answered your question, apart from saying that the right questions are being asked under the current legislation, but I appreciate that we need to look at the issue to deal with the economic and climate pressures that we have today.

11:45

Mark Ruskell: Thank you. Does Annie Breden or Brendan Callaghan want to come in?

Annie Breden: We are neither a regulator nor a statutory adviser. Obviously, we require our tenants to have all their consents before we grant a lease, but we do not get directly involved in the regulation process, so I will not offer any further thoughts on that.

Brendan Callaghan: The EIA regulations are very much about the process of gathering and analysing environmental data to inform a decision within a regulatory regime. That can be, and often is, complicated, involved and expensive for developers. I am not sure that the same questions have been asked in Scotland as have been asked in England about simplifying that. There is much more emphasis here on doing that properly and rigorously. Certainly, we do that as a regulatory body.

However, that process is almost different from the policy around the decision. That is about making an informed decision by considering the impacts—what will be lost and what will be gained—and reaching a balance. The bill will not change that. The EIA regime and the legislation set out the procedures and the policy. That currently is quite complicated but, equally, if used properly, it is rigorous and robust. However, the question of how to reach a decision once you have the information on the impacts is different—that is a policy question, and it is trickier. I think that that is what Chris Tuckett was pointing out.

The Convener: I have a question for Chris Tuckett. Will the EIA provisions that this bill will deliver, if it goes through, be compatible with the direction of travel on environmental outcomes in England? Will we have issues further down the road? We are seeing increasing examples of mitigation measures being put in place elsewhere in the United Kingdom to offset offshore wind farms down south. For example, south-west Scotland has been chosen as the site to mitigate

the potential impact on Sandwich terns in Norfolk. Will we have issues in the future if the approaches to EIAs and environmental outcomes diverge?

Dr Tuckett: Yes, we might. I am tempted to say that you should do your own thing and let us see what happens, and that you should make your own decisions, because it is your environment.

Equally, you are absolutely right that the marine environment, or the environment in the round, does not respect boundaries. We need to look at the environment as a whole and at what is best for it. If legislation in one country in the UK means that you cannot respect the continuity of the environment, that will cause problems, particularly with regard to things like compensation and the marine recovery fund. If we have to go down the road of compensation, it would be great, particularly for the marine environment, to consider that on a UK-wide basis. When you are talking about one or other side of the dividing line, that would be helpful.

Of course, legislation is as it is, and we must respect the Governments, their wishes and the way that it is set out. However, it would be helpful to look practically, below the legislation, at things like whether compensation measures can be shared across boundaries.

The Convener: Okay. Thank you.

I asked Brendan Callaghan about the wide provisions in part 2 of the bill and whether they are a sledgehammer to crack a nut. All the witnesses we have heard from up to now would quite like part 2 to be removed altogether. They see no need for it. There are also concerns about there being no overarching environmental safeguards or limitations on how the power in part 2 might be used. Should there be a non-regression provision, or are the safeguards sufficient? If they are not, what would you like to see added? I ask Brendan to kick off, and then I will move on to Katherine Leys and Alex Flucker.

Brendan Callaghan: Scottish Forestry is a Scottish Government agency, so I need to be careful in this territory. It is really for the Parliament to decide whether a non-regression provision is deemed to be necessary protection and whether the route for any secondary legislation should be the affirmative or the negative procedure. The current provisions signpost that certain changes affecting criminal offences, for example, should be subject to the affirmative procedure. Another option is to consider the secondary legislation routes. The driver for drafting the bill in this way is that secondary legislation is administratively efficient; it will come to Parliament for scrutiny and that is sufficient. Beyond that, it is a matter for Parliament and the committee.

The Convener: We might be operating under a Government of a certain colour now, but that might not be the case in a year's time. Are the necessary safeguards in place to make sure we do not damage nature in the future? That is the angle that I am coming from.

Dr Leys: We have supported the provisions as they are set out, and I have indicated the difficulties in delivering under the current legislation. A non-regression provision or element would ensure that we remain committed to the delivery of biodiversity benefit and the protection of nature as an overall aspiration. With that in mind, we would support non-regression as a measure that the committee might wish to propose.

Alex Flucker: We think that the bill should afford non-regression levels of protection to the environment as a result of the power. The risks of flipping either way are too great. We would support the inclusion of that if it was proposed.

Dr Tuckett: We would support the inclusion of a non-regression provision as well.

The Convener: Rhoda Grant has a supplementary question, and then she will ask her next set of questions.

Rhoda Grant: I have a quick supplementary, to give an example of the breadth of what is allowed. Under section 3, regulations can be made

“to ensure consistency or compatibility with other legal regimes (either domestic or international)”.

That is vast. Section 3(a) has some of the standards that should be followed, such as

“restoring, enhancing or managing the natural environment ... preserving, protecting or restoring biodiversity”

and

“environmental assessments”.

Is it possible to amend the bill to say that the powers in it can be used only in pursuit of section 3(a)? That would mean that they could not be as wide as to take in anything—they would have to be within the spirit of the bill and what we are trying to achieve here.

Dr Tuckett: The short answer is yes. I will leave it to the other witnesses to truly understand what enacting that in Scotland would mean in relation to the specific things that we were talking about earlier and the need for changes to the EIAs. From a JNCC perspective, keeping the power to just that one subsection would be positive, but I will be guided by others' views on that, because I am not sure whether that would work for them.

The Convener: Would anyone else like to come in? Everybody is looking at the desk in front of them.

Brendan Callaghan: It is a tricky one. Years down the line, when you are using this legislation, if you have limited the power to section 3(a) and not the other subsections, if that is what you mean—

Rhoda Grant: I mean the exercise of the subsections being constrained by section 3(a)—that is, that the power could be used only in pursuit of section 3(a).

Brendan Callaghan: You are suggesting that the subsections could relate only to maintaining or advancing standards.

Rhoda Grant: Yes.

Brendan Callaghan: I think that that is implicit in section 3. As you know, it is the parliamentary drafters who shape what policymakers want, and they have come up with that wording. There may be a better form of wording if what you propose is consistent with what was envisaged.

The Convener: The implication is that that is not implicit and that it needs to be—if I am reading between the lines correctly.

We will move on to part 3, on national parks.

Rhoda Grant: What are your views on the changes to the statutory purposes for national parks? What will be the practical impact of those changes? What is wrong with the powers as they stand? Is there any likelihood that the changes could lead to a hierarchy of powers and aims?

Dr Leys: I understand that the detailed wording of the changes was largely a function of updating, modernising and reflecting the current operational practices more than anything profound. Nothing was necessarily wrong with what was there—it just did not necessarily reflect everything that it could or should, particularly in the current climate crisis. It is about taking into account wider environmental issues and pressures.

I am sorry, but I cannot remember the second part of your question.

Rhoda Grant: I asked whether the proposed changes could create a hierarchy of aims for a national park. The legislation as it stands says that all aims are equal unless there is a conflict between them. I guess the concern is that, if you upset that balance, you might end up with a hierarchy of aims, and that could impact on people's views of a national park.

Dr Leys: We see the suggested changes as clarifying the intent rather than introducing a hierarchy, and we do not necessarily see one developing in the future, because the bill does not set out any removal of that equal basis.

Rhoda Grant: Does anyone else have any comments?

Alex Flucker: Do any particular elements of the powers give rise to a hierarchy of aims? Are you concerned about particular aims?

Rhoda Grant: When the bill was initially proposed, there were concerns about local economies, local cultures and the like being secondary to a national park's main aim, which is to preserve the nature and biodiversity of the park. I see more reluctance or pushback against new national parks than there was when the first legislation went through, when people were keen to have national parks in their area. The issue seems to have become a lot more controversial. Have the aims changed slightly, and has that led to a lack of confidence among those living and working in national parks?

12:00

Alex Flucker: I do not see why there would be a situation that gives rise to a hierarchy of aims for national parks. SEPA has a broad remit and a broad set of aims that we have to pursue, and we seek to do that in a balanced way that is strategically aligned to our objectives and our statutory obligations. Without wanting to speak on behalf of national parks, I imagine that they would look to do that in a similar vein.

Annie Breaden: Our Glenlivet estate is partly within the Cairngorms national park and, as part of the management of that, we are developing what we call our Glenlivet 2050 vision. We are looking forward to 2050 and seeking to understand what the local community and other stakeholders would like the estate to look like and be delivering in 2050. An important part of that is ensuring that there are affordable houses for local people, so that they can live there, and that jobs are created so that the population is sustainable and young people do not have to leave to get work. Nature restoration and climate activities are important, too.

I had not read the bill as potentially introducing a hierarchical approach. For us, maintaining a more holistic approach, especially at Glenlivet, is important.

Dr Leys: We recommended an additional bullet point about supporting vibrant and resilient landscapes that are rich in natural and cultural heritage, which would address your concern about people feeling that their own culture was not well respected in the legislation.

The Convener: Is there a risk that we could end up with an endless list, with the focus then on the things that were excluded from the list rather than those that were on it? You could argue that indigenous species or indigenous populations should be protected or that there should be a focus on sustainable economic regeneration or

development. Those things are included in other bullet points but they are not specifically set out in the bill. I apologise to any planners who are watching, but we know what planners are like. Could having what appears to be a hierarchy of objectives lead to unintended outcomes? Katherine Leys, is that possible? I presume that the shrug of your shoulders suggests that that could be a possibility.

Dr Leys: It is always possible for people to take away things that were not anticipated. I am not sure that we would necessarily see that as highly likely, but you can never tell, frankly.

The Convener: In that case, we may need to consider amendments that ensure that we avoid those unintended consequences.

Dr Leys: It is always wise to have unintended consequences in mind.

Elena Whitham: You will all be happy to know—as will the other witnesses who are waiting to be on our next panel—that we are nearly at the end of this session.

What are your views on the bill's duty on public bodies to help to "facilitate the implementation of" the national park plans rather than just to "have regard to" the plans? How would that affect the operation of your public bodies?

The Convener: Crown Estate Scotland could probably kick off on that.

Annie Breaden: The Glenlivet 2050 project is being taken forward in partnership with the Cairngorms National Park Authority, Moray Council and Highlands and Islands Enterprise. The work with the park authority, in particular, is helping it to deliver its partnership plan. We are conscious of the wider planning context that we operate in, and Glenlivet's aims are compatible with the park authority's partnership plan. We are already doing that work.

Elena Whitham: Could the aims and objectives of your own public body come into conflict with the national park plans? How would that be worked out if you had to help to implement a national park plan?

Annie Breaden: Ultimately, we have a duty to maintain and enhance the value of the estate. At Glenlivet, we still have commercial forestry operations, which help to return revenue from the rural estate. We need to balance providing a commercial return with meeting the wider aims, which is entirely feasible. We want the national park to be a thriving, living place and not solely a designation.

Emma Harper: We are in the home straight. Do the witnesses have any views about the power to enable national park authorities to impose fixed-

penalty notices for breaches of bylaws? Following on from what Elena Whitham asked about national park plans, do we need an independent review of whether the two current parks have delivered their plans effectively, including with regard to sustainable economic communities, for instance? It is a two-part question.

Annie Breden: You are looking at me, but I am afraid that I do not have enough knowledge of the Cairngorms national park and what it has been delivering.

The Convener: Katherine Leys, it might be one for you, given your experience of national parks and the role that you play.

Dr Leys: We are supportive of people obeying the law, so introducing fixed penalties to ensure that that happens seems reasonable to us. I am sorry, but I cannot remember the second part of the question.

Emma Harper: There have been calls for independent reviews of the two national parks, because it has been 20 years since they were established. I wonder whether we should call for an independent review.

Dr Leys: We have not come to that conclusion. We are supportive of the national parks and support them in delivering their aims and plans. We would not necessarily ask for a review, because we think that the parks are doing a good job independently.

Alex Flucker: I will try to respond to the first question, which was about fixed-penalty notices. SEPA has been using powers to impose fixed and variable monetary fines for some time now. They are an effective tool for our compliance teams in their regulatory work, as they deter bad behaviour and bad outcomes. If they are used proportionately and effectively, they should bring about better outcomes with regard to behaviour and the impact on the environment in the parks.

I have no comment on your second question, about the need for a review of the national parks.

The Convener: I will use my convener's privilege and sneak one in at the end. This question is for Brendan Callaghan. How does Scottish Forestry—I know that you cannot speak for the whole commercial forestry sector—see the national park plans? We have heard that you plant trees on a 30-to-50-year cycle, and you have to work to the UK forestry standard, which is reviewed regularly. How will everything fit together if you are looking to plant in a national park and you have to deliver the national park plan's objectives? How will that work in practice? Will it put you off planting? Will it potentially disincentivise commercial forestry companies that

are looking to invest if they have to follow the plans rather than just have regard to them?

Brendan Callaghan: The presence of national parks very much has an impact on the type of forestry that is being managed—both existing forestry and new forestry. Each local authority and national park has a duty to prepare a forest and woodland strategy, which sets out their priorities for the management and expansion of woodland. We can look at how that has been playing out in recent years.

We view both national parks as close delivery partners. We work with them to prepare those strategies and we have tailored the forestry grant scheme incentives to recognised priority areas that have been identified by the national parks. Those areas vary in character from areas outside the park in that they are more focused on native woodlands, which you would expect, given that parks are nationally recognised areas of natural cultural heritage. However, picking up on production and jobs, both parks also take account of productive woodlands. Those things are recognised and there is definitely scope for more productive woodlands.

National parks have a higher level of sensitivity. If we look at what has happened in national parks, we see that they have a different balance of woodland creation. They are much more about woodland creation through natural means, such as deer management and natural regeneration of native woodlands, and much less about non-native conifer productive woodlands. Creation of the latter can occur in national parks, but the opportunities are more limited. That is entirely consistent with the regional and national responsiveness to the sensitivity of the landscape.

That is what you would get if you rolled out regional landscape partnerships across the country. Different areas have different characters that are suitable for different types of woodland and forestry.

The Convener: Dumfries and Galloway, in particular, has one of the most intensive commercial forestry areas in the whole United Kingdom. Indeed, it is probably one of the biggest areas that Scottish Forestry manages, with extensive commercial woodlands. Are you concerned about the potential for the minister to designate Galloway as a national park? Would that cause you issues with your current plans for commercial forestry?

Brendan Callaghan: To clarify, Scottish Forestry is the regulator and we have a role in administering incentives, whereas Forestry and Land Scotland administers estates down there. We have input to that process to make sure that

any decision is informed by an understanding of the impacts on forestry.

Designation would have an impact on regulation, because national parks are recognised as sensitive areas within the EIA regime, so more projects would need to be considered and screened and the considerations would be more focused. That would have resource and cost implications for the Government and for the forestry managers down there.

We have seen that, if you designate a national park in an area, it will influence the type of woodland creation that occurs and the management of woodland in it. If the decision to designate is made, it is likely to mean that there will be less new commercial woodland, because that will not fit with the balance that the national park is seeking. Designation may influence the pace and the rate at which the existing woodland diversifies.

The Convener: Thank you very much for your time this morning. I know that we started a bit later, but we also took a little bit more of your time than expected. We very much appreciate your contributions.

I will now suspend the meeting for a short comfort break and to allow a changeover of witnesses.

12:14

Meeting suspended.

12:19

On resuming—

The Convener: We will now hear from a second panel on the Natural Environment (Scotland) Bill. I welcome to the meeting Alan Hunt and Neil Langhorn from Environmental Standards Scotland. Thank you for your patience this morning. We have up to 45 minutes for this session. You do not need to operate the mics—that will be done for you.

I will kick off with a quick question. ESS has been given a new function in the bill as an independent review body. How will that role complement and interact with your existing functions as an environmental watchdog?

Neil Langhorn (Environmental Standards Scotland): Thank you very much for the opportunity to give evidence. We are happy to be here today.

We are happy to see the targets being introduced in the bill and for ESS to be designated as the independent review body. ESS is probably the most appropriate body to fulfil the role, and our

status as a non-ministerial office can provide the independent scrutiny and assurance that Parliament is looking for. The role is a substantive addition to our existing remit, but it will complement our existing functions and work. It is distinct. It comes with a statutory timetable that requires ESS to undertake scrutiny and to report to Parliament at specified intervals. That is different from how we currently operate.

To carry out that regular reporting, ESS will have to undertake continuous work to understand the data, the evidence and the methodology that underpins the Government's own assessment of progress. We will have to do work to examine what other evidence is out there to support our independent assessment of progress. We will also want to examine the action that is being taken through policies and programmes right across the Government to check whether that is sufficient to ensure that we are on track to meet the new targets.

We welcome the introduction of the targets and the introduction of the new remit for ESS, but it is vital that the process and the role of ESS within that and the role of some others is clarified. It is crucial that our independence is protected as part of that process, and it is important that ESS is adequately resourced to do a thorough job.

The Convener: Do you have concerns that your existing role as an environmental watchdog might take second place if you become an independent review body? Will you need more resources, financially and manpower-wise, to be able to carry out those functions efficiently?

Neil Langhorn: We would have concerns if we were not properly resourced to undertake the new role. It is a substantive addition to our role and we will need more resources and more personnel to be able to carry it out.

We have had input to the financial memorandum to the bill. The Scottish Government approached us before Christmas and asked us to put together some estimates of the resources that we would need. The figures in the financial memorandum reflect what we proposed. That reflects our understanding of the role at the moment but has some variables, because we do not know exactly what the role will look like and what the targets will entail.

As I said, if it is properly resourced and if we get the extra personnel and so on that we need, the new role can complement our existing work. However, we are clear—and our board has been clear in setting out the principle—that, if we are to take on new roles, they need to be properly resourced. If they are not, they will take away from the scrutiny of other areas of environmental law that we are able to undertake.

Emma Harper: I will be succinct. Is the framework for review and monitoring functions set out in the bill sufficient and robust? Does it ensure your independence? Your evidence sets out an amendment that you would like to see regarding the provision of reports directly to the Scottish Parliament. I want to hear your thoughts about that.

Neil Langhorn: As I said in my first answer, some of the elements of the process for reporting, monitoring and scrutiny need to be clarified. As we highlighted in our written evidence to the committee, at the moment, the bill envisages that we will provide our reports to the Scottish ministers, who would then lay them before Parliament. We do not think that that is appropriate because of our status as a non-ministerial office. We are directly accountable to the Parliament rather than to ministers. It would be more appropriate for our reports to be laid directly before Parliament. We have had some discussion with the bill team and the policy officials in the Scottish Government, and they have taken that away for consideration. That element of the process could certainly be clarified.

Another element of the process that we would like to see clarified is what happens after we have laid our report, particularly if we conclude that progress is not on track and that things need to be improved. At the moment, the bill is silent on that issue. We can draw from some examples. The Climate Change (Scotland) Act 2009 puts a duty on ministers, if they decide that they are off track, to set out what they will do to catch up. There are also examples from elsewhere. Our counterpart body in England and Northern Ireland, the Office for Environmental Protection, undertakes a similar scrutiny role on progress on the UK Government's 25-year environment plan. After it has relayed its report, ministers have a duty to respond to that report. That is another element of the process that could be clearer.

Evelyn Tweed: You talked about costs and resources and making sure that you have enough money to continue to do what you do as well as undertaking the new role. Can you tell us a bit more about how you looked at the costs and how you put your estimates together?

Neil Langhorn: We looked at what we understood, at that time, the role to be and what that would involve. At the same time, we looked at what kind of skills and so on we would need to undertake that role. We will need some policy analysts and data analysts who are able to look at and understand the data that underpins progress reports. We will also need additional scientific advice to help us to undertake the other scrutiny role that has not been talked about quite so much—we have a role in looking at any review of

the targets and their updates. We looked at all of that and tried to put together an estimate of the team that we would need to undertake that role in addition to, but complementary to, our existing functions.

Some elements of the role have a small degree of overlap, but, as I said at the start, because there is a statutory timetable—we have to prepare and produce a report every three years at least—it is different from how our current functions work. Currently, we undertake a rolling prioritisation process and decide on the issues that we will look at.

The estimates in the bill set out a minimum and a maximum that we thought we would need to do the role, and they reflect our understanding of what the role entailed at that time. If, as we hope, some elements of the role are clarified, perhaps we can amend those estimates. However, they are our best estimates at the moment of what we would need in order to do a thorough job for Parliament.

Evelyn Tweed: At the present time, are you still looking at what needs to be done and what your future workload would look like, given what you have said in your opening remarks about being properly resourced? Can you tell us what you think being properly resourced looks like?

Neil Langhorn: As we set out in the financial memorandum, to be thoroughly resourced to do all the new work on top of what we are currently doing, our maximum estimate is just over £1 million and our minimum resource estimate is £664,000. We appreciate that that is a substantive addition to our existing budget, but it is a substantial new role and it needs to be taken seriously if we are to provide the independent scrutiny that Parliament will be looking for.

Elena Whitham: In your written submission to us, you state that you

“would like to see more evidence for an appropriate level of investment in developing ... targets and collecting and analysing high quality data”—

you mentioned that data just now—and that

“investment in the public authorities responsible for data collection and reporting will be essential.”

Who are the other key actors in this space in respect of that high-quality data? Is the evidence lacking in the financial memorandum about the wider support and functions that are out there?

Alan Hunt (Environmental Standards Scotland): Your previous panel of witnesses were from some of the organisations that we expect will collect that data and provide it so that assessments can be against the indicators that support the targets. We said in our evidence that the better and more robust the data, and the more

evidence that there is behind it, the more effectively we can scrutinise progress against the targets and the more reassurance that we can provide to Parliament. We have seen, from the equivalent process that happens in England and Northern Ireland, that the Office for Environmental Protection is not able to give a full assessment of progress against some of the indicators for a number of the targets because there is not enough evidence. It then has to do quite a lot of work to say, "What does the baseline suggest? What progress has been made? Where might more work be needed to clarify that?" Part of the role in providing effective scrutiny is calling out those gaps and highlighting where it is not clear whether sufficient progress is being made.

12:30

Elena Whitham: Do you feel that much more emphasis needs to be put on collecting the high-quality data to be analysed, in order to help everybody to play their role across the public bodies responsible for monitoring the targets that will be set?

Alan Hunt: The targets are being set through secondary legislation, which makes it hard to say exactly which indicators will support them and what evidence base is needed to assess those targets. For complex targets, it is appropriate and necessary to have sufficient time to set out what the indicators should be and what evidence is needed to support that. However, it is quite difficult to say now that there is enough resource in all the organisations that are responsible for data on biodiversity in nature to provide a sufficient and robust baseline.

Elena Whitham: Would this committee, in whatever guise it takes in the next parliamentary session, also need to be alive to ensuring that the resourcing is reflected across the board, not just for you but for the other organisations that need to be doing this work?

Alan Hunt: Yes.

Mark Ruskell: Can you say more about what you consider to be an effective trigger for a target in the bill?

Alan Hunt: In our written evidence, we set out that, in principle, the seven target topic areas that have been proposed—three are taken forward in the bill, two are proposed for further work and two are discounted—are useful and sensible target topic areas to consider. We would like to see a bit more detail and a bit more process around the mechanism for adding additional targets. At the moment, the bill says that, for each of the three identified target topic areas, there must be "at least one target". Presumably there will be more,

because some of the targets around habitat extent and condition are quite complex.

However, for the bill to reflect the developing evidence base across biodiversity and the challenge of responding to biodiversity decline and the nature crisis that the Scottish Government talks about, we need a relatively clear process for adding additional targets where they are identified. For example, ecosystem integrity is an area with a developing evidence base internationally, and a number of different indices could be used to consider that. I know that the programme advisory group is thinking about that. The bill does not include that, but, by the time it has completed its passage and become a piece of legislation, things will have moved on. There needs to be an effective process for adding something when it is seen as a significant part of halting biodiversity loss and encouraging biodiversity recovery.

On the process that is being proposed for the monitoring, legislation and targets, we see that 2030 is not far away and it is a challenging timeframe in which to do something towards halting biodiversity loss. Similarly, 2045 is not far away if we are to reverse that decline. We need to have a responsive framework that reflects the best and latest evidence.

Tim Eagle (Highlands and Islands) (Con): Your submission sets out that it will be important that

"targets are set ... at the appropriate spatial scale and timescale."

Can you explain that? Does the framework of the bill ensure that, or is there a need for additional target-setting criteria, as has been suggested by some stakeholders?

Alan Hunt: I have not seen the full evidence of the other stakeholders, but this is a situation in which you will have a number of different, quite challenging and complex targets, and you will need a robust evidence base to say what those targets are and how you will deliver them. Therefore, I would echo what others have said: the targets themselves set a high-level objective and are a useful way of saying what you are working towards, but it is the actions, the programmes of work, the activity that you deliver against them and the implementation that will make the difference.

We are not necessarily saying that there needs to be something in the bill about the target-setting process—although we are open to that being clarified—but the targets that will come in secondary legislation need an appropriate framework and structure around them to say what the indicators are, how they will be evidenced, what they are working towards, who is delivering them and through what means, and how that will be resourced.

Tim Eagle: Thank you.

The Convener: I call Elena Whitham.

Elena Whitham: I have already asked my question, convener—oh, sorry. I have another one. It is my turn to be mistaken. I am sorry, convener.

With regard to enforcement of the targets, are you content with the framework in the bill for what happens if targets are not met? How will that interact with ESS's existing powers in relation to Scottish ministers' non-compliance with environmental law?

Neil Langhorn: That is one of the areas where, as I have mentioned, there could be some clarification and the provisions could perhaps be sharpened up. At the moment, as I understand it, only ministers can say that things are not on track and trigger reviews of the target. We think that there could also be a provision to ensure that, if we assess that things have gone off track, something will need to happen in response.

Moreover, as it is currently drafted, the bill suggests that, if ministers believe they cannot meet the target, they have to say what they are going to do but then they have to change the target. However, the climate change legislation requires that, if ministers believe they are off track, they must set out what they will do to try to catch up. I think that something along those lines might be more sensible. There could be some clarification in that respect, certainly around what happens if, in its independent assessment, ESS agrees—or disagrees—with ministers that things are off track.

Elena Whitham: Thank you.

The Convener: In that scenario, might you, as the environmental watchdog, have more work to do in ensuring that some of the situations that Elena Whitham referred to are covered and that you have the flexibility and the capacity to pick up and explore the issues and hold the Government to account in certain areas in a way that that does not happen at the moment? Is it important for the financial memorandum to appreciate that you have that role, too?

Neil Langhorn: I think so, yes. In fact, that is why the figures that we have set out envisage a significant uplift in our staff. It represents a significant new addition to our role. In our view, this will be not just a case of checking the report and issuing our own assessment; there will be all the work that goes alongside that and all the work involved in looking into any issue that might arise with delivery against the targets in any three-year period.

The way in which the bill has expressed our role gives us that flexibility. We will have the

responsibility to prepare our three-year and 10-year reports on the targets, but it will also be open for us to decide how we undertake the scrutiny role. We certainly envisage an opportunity for us to do a deep dive into, say, one particular aspect of the targets and look at how well it is being delivered, and we have our existing statutory powers to fall back on if we find that things are not adequate.

The Convener: Thank you. Mercedes, before we move on to part 2, do you have any questions?

Mercedes Villalba: They have been answered.

The Convener: We will move on to part 2, which is on EIA legislation and the habitats regulations. We will start with questions from Rhoda Grant.

Rhoda Grant: In your written evidence on part 2 of the bill, you say that you responded to the Scottish Government's consultation on the proposal for new enabling powers, you stated that they

"should be defined objectively, framed as narrowly as possible and any powers to make (or amend) secondary legislation restricted by effective legal boundaries."

Has the bill, as drafted, delivered that? If not, what are the environmental implications of how the power is currently framed?

Alan Hunt: One thing that we would set out is that, whether it happens through a non-regression clause or through some other tool, such as an overarching principle on environmental protection and environmental enhancement, there needs to be a bit of clarity as to why the power is being used. In principle, we supported the scope for adjustments to be made to how EIAs and habitats regulations appraisals function, particularly in ensuring that they maintain pace with technological developments or international developments around best practice.

The power has quite a broad scope, and the bill itself provides a number of different reasons why it might be used. If there were some overarching clause or principle, it would give a bit of assurance about how the power would be used in the longer term. As was discussed in the previous evidence session, we are not talking about legislating for this Parliament or the next—this is, potentially, in perpetuity.

Rhoda Grant: Would the standards highlighted in section 3(a) be enough to curtail the power and ensure that it was used for the right reasons?

Alan Hunt: We would still call for either a non-regression clause or an overarching principle that set out how it should be used, the purpose of any changes and whether they would be made through the affirmative or negative procedure, depending

on which bit of legislation was used. Having something that clarified why the enabling power was going to be used would be helpful.

Rhoda Grant: So, would you prefer an affirmative order plus a non-regression clause plus a referral back to section 3(a)?

Alan Hunt: We do not necessarily have a view about the parliamentary process or which route a particular change might take, but clarity in the bill, regardless of which route was taken, would help to give assurances as to why the power was being used.

Rhoda Grant: Thank you.

The Convener: I want to cover some of the topics that we have just heard about. First, a lot of stakeholders have told us that they see no reason for part 2. They are concerned that it gives the Government broad, sweeping powers that they do not feel are necessary, and they feel that a lot of existing provisions already give the flexibility that the Government is seeking. They were also concerned about the bill's not including a non-regression provision and that, as we have heard, the overriding objectives have not been clearly defined.

Are you confident that the principles that you have set out in your submission about maintaining

“a high level of environmental protection”

and

“ensuring Scotland keeps pace”

can be delivered within the bill as drafted, or do further amendments need to be made other than those relating to how secondary legislation might be dealt with by the Parliament?

Alan Hunt: We have called for an additional overarching principle that sets out explicitly that these changes should either maintain or enhance environmental status and quality but also deliver

“a high level of environmental protection.”

That would make things more robust.

The Convener: Do you feel that part 2 is needed? Do you feel that EIAs and habitats regulations appraisals are not flexible enough to deliver the sort of flexibility that the Government is seeking?

Alan Hunt: We are broadly supportive of the principle of having the power to amend legislation efficiently. It is the scope and the protections that are in place that we have some concerns with.

The Convener: Thank you. Mercedes, do you have any questions?

Mercedes Villalba: No—my questions have been answered.

Mark Ruskell: I have a quick follow-up. Should part 2 be enacted, what would be ESS's role in looking at the adequacy of existing environmental assessment regulations and habitats regulations appraisals? You will have heard the previous panel making some bespoke cases for change or adjustments. Would ESS have a role in advising ministers on what you would consider to be appropriate changes under part 2?

Neil Langhorn: We do not see ourselves as advisers to ministers as such, because of our independence, but it would certainly be within our existing remit to look at EIAs or HRAs and how they were working and to identify any possible weaknesses, shortcomings or ineffectiveness in how they were being implemented. It would certainly be within our remit to proactively identify something either in response to a representation that was made or through our own evidence gathering. Indeed, when proposals for changes are put forward by ministers, we will quite often respond to consultations and input to their parliamentary scrutiny.

I suppose that it would depend on the route, but, certainly within our existing remit to look at the effectiveness and application of environmental law, we could look at those particular issues.

12:45

Mark Ruskell: Is that currently part of your work plan? Is it a priority at the moment?

Neil Langhorn: It is not currently in our work plan. We have had a few representations on how EIAs and HRAs are operating, but they have not yet stacked up enough for us to do a specific piece of work on the matter. Now that we are coming to the end of our first strategic plan period, we are reviewing our strategy, which will come to Parliament for approval later in the year—in the autumn. As we come to the end of our existing programme of work, we will look at what will be coming up in the next five years. It is not a specific piece of work that we are planning to do, but it is on our long list.

Mark Ruskell: Thanks.

The Convener: I have just a quick question. We were quite baffled by the reasons that the bill team gave initially for including part 2 in the bill; indeed, the only example that they gave was the ability to digitise EIAs. Could guidance be used when it comes to digitising EIAs, or is primary legislation needed for that?

Neil Langhorn: I hesitate to speculate, as I am not an expert in this particular area. In a previous life, though, I worked for planning in the Scottish Government, and I recall that, when the pandemic started, we had to make emergency changes to

the rules to allow documents to be submitted only in electronic form. That is the only parallel that I can draw.

The Convener: So, there might be some scope in that respect.

As we have no further questions, I thank Alan Hunt and Neil Langhorn very much for their succinct and helpful responses to our questions and for joining us this morning.

That concludes our business in public, so we will now move into private session.

12:47

Meeting continued in private until 12:58.

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