OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Rural Affairs and Islands Committee

Wednesday 4 June 2025

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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RURAL AFFAIRS AND ISLANDS COMMITTEE
19th 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:

Stewart Cunningham (Scottish Government)
Jim Fairlie (Minister for Agriculture and Connectivity)
Leia Fitzgerald (Scottish Government)
Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy)
Lisa McCann (Scottish Government)
Joanne Napier (Scottish Government)
Sam Turner (Scottish Government)
Mercedes Villalba (North East Scotland) (Lab)
Brodie Wilson (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 4 June 2025

[The Convener opened the meeting at 09:12]

Natural Environment (Scotland) Bill: Stage 1

The Convener (Finlay Carson): Good morning, and welcome to the 19th meeting in 2025 of the Rural Affairs and Islands Committee. Before we begin, I remind everyone who is using an electronic device to switch it to silent. We have received apologies from Elena Whitham.

The first item on the agenda is an evidence session with the Scottish Government as part of our consideration of the Natural Environment (Scotland) Bill at stage 1.

This week, we will conclude evidence gathering on parts 1, 2 and 4 of the bill before we move to part 3 of the bill next week. To discuss parts 1 and 2 of the bill, I welcome to the meeting Gillian Martin, Acting Cabinet Secretary for Net Zero and Energy. I also welcome from the Scottish Government: Leia Fitzgerald, head of the nature division bill unit; Lisa McCann, head of the biodiversity unit; and Joan McHutchison, solicitor.

You will be pleased to hear that we have allocated about two hours to discuss parts 1 and 2, and we have quite a few questions to get through. I ask members, the cabinet secretary and officials to be as succinct as possible. Before we begin, I ask the cabinet secretary to give a short opening statement.

Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy): I will keep it short, convener. Thank you for inviting me to give evidence on the Natural Environment (Scotland) Bill. I am not going to list what the bill does, because the committee knows that, and I will receive plenty of questions that will allow us to delve into detail.

I will set out the wider context for the bill and why it is important. There is an indisputable body of evidence that biodiversity, both globally and in Scotland, is in jeopardy. Just like climate change, the loss of species and the degradation of our natural environment are an existential threat to humanity. The actions that we take to address that threat are fundamental to our wellbeing and survival as a species.

The Scottish biodiversity strategy sets out a clear ambition for Scotland to be nature positive by 2030 and to have restored and regenerated biodiversity across the country by 2045.

The Government cannot tackle this crisis alone. We know that local authorities, farmers, crofters, environmental non-governmental organisations and national park authorities, to name but a few, are already undertaking vital actions to support our precious wildlife and repair and enhance our natural habitats. Although our combined efforts to address the crisis to date have generated some successes, if we are to meet our ambitions, we urgently need to accelerate and scale up those efforts.

09:15

The Natural Environment (Scotland) Bill both underpins and builds on the vision that is set out in the biodiversity strategy, driving the actions that we need to take to enable nature recovery on a national level. Tackling the climate emergency is a long-term endeavour that will not be achieved during any single parliamentary session, but, by placing the duty on Scottish ministers to set and report on targets, the bill will enable us to hold future Governments to account and ensure that they continue to develop, support and deliver the lasting outcomes for biodiversity that we need to see.

Other powers that are contained in the bill update environmental impact assessments and habitats legislation, modernise the way in which national parks are managed, and reform deer management. They are all designed to support that high-level ambition and help us to deliver the more than 100 actions that we have committed to in our biodiversity plan.

I am grateful to the committee for the scrutiny of the bill to date and I have paid close attention to the views that witnesses expressed in earlier evidence sessions. I know that some stakeholders disagree with some of the powers in the bill and that others are frustrated that we have not been able to go further, but I hope to address their concerns today. I am, of course, meeting stakeholders throughout the summer, and I meet ENGOs regularly.

I look forward to discussing the issues that the committee raises and to taking members through parts 1 and 2 of the bill.

The Convener: Thank you, cabinet secretary.

You have set out that, in the past, the Government has had plans and ministers have had targets, yet we continue to see a decline in biodiversity. A good example of where we can see that is the “State of Nature 2023” report, which

shows that there is a continued decline in biodiversity despite various attempts to stop it. There are very few successes with specific species. Why do you think that statutory targets will change the situation?

Gillian Martin: Statutory targets are not a silver bullet. As I said in my opening statement, it is important to keep successive Governments' eyes on the ball by requiring them to meet the targets and take the actions that underpin the targets.

The committee will know intimately the range of workstreams that we have designed to provide policy and action, because that is what there must be. If we just have targets, we will not achieve anything, but, if targets are statutory, that means that there has to be reporting associated with meeting them.

The targets cannot exist in isolation. They are underpinned by the strategic framework, which was published in November last year and includes the biodiversity strategy, which sets out the goal to be nature positive by 2030 and to have sustainability restored and regenerated by 2045. There are also six-year rolling delivery plans, which will have cross-sectoral action.

Plans exist in other Government portfolios as well. Mairi Gougeon has been taking on work under the Agriculture and Rural Communities (Scotland) Act 2024, including the whole-farm plan and work with the agriculture reform implementation oversight board, or ARIOB, and she has been implementing policies from the fisheries management strategy in the marine environment. We are also doing work across the marine protected areas network, for example. There is also the budgeting that is associated with those things, such as the nature restoration fund in this year's budget, and other historical pieces of work that have been done to hold planners and those who make planning decisions accountable, such as national planning framework 4. There is a raft of policy areas and duties on public bodies—councils, for example—that will underpin this work.

It will not be easy. I am setting out that, by 2045, we will have regenerated and restored biodiversity. That is only 20 years away, so there is an urgency, and we have got to the point where we need statutory targets. Statutory targets hold to account not just Government but Parliament, public bodies and future Governments. Biodiversity is far too serious a matter for us to leave it to chance or place hope in policies alone. As the convener rightly said, the "State of Nature 2023" report did not make good reading, which is why urgency must be associated with the actions that are set out in the bill.

The Convener: You are saying that there is an urgency, but there is no indication as to what the targets might be or when they will be implemented. Should that timeframe not have been drawn up in parallel with the bill? I know that this is a framework bill and that secondary legislation is the right place to include requirements for targets and reporting, which will change. However, to take one example, commencement of the Agriculture and Rural Communities (Scotland) Act 2024 did not happen until a year after the bill was passed. If the situation is urgent and we are looking to halt the decline by 2030, should the bill not include more than just the ability to set statutory targets? Should it not have more meat on the bones to ensure that the urgency is reflected?

Gillian Martin: The targets will be set out in secondary legislation should the bill pass. We are at the end of a parliamentary term, and the chances are that there will not be time to enact secondary legislation before the next session. It will be quite sobering for the new Parliament in 2026 that a bill has been passed which sets out in law a requirement to have statutory targets. The Parliament will have to discuss what those targets should look like, and it will be able to look in a granular way at each specific target and assess how far we can go on it. Some agility will be associated with the ability to scrutinise targets as well as to set them out.

Additional targets might end up being associated with the bill as it passes through the process. I do not know how the bill will evolve—that is the beauty of parliamentary work. I keep going back to the fact that the bill will allow us to respond in an agile manner. It will allow targets to change or be ramped up should there be particular pressures or changes in technology, or if new data sets or evidence were to become available. We might need to say that we will do more on a particular target in response to a "State of Nature" report, for example.

A great deal of work is being done by our academic institutions and by the Government with the likes of the Scottish Environment Protection Agency, other public bodies and NatureScot to gather more data that will allow the Parliament and the Government to make decisions quickly and in an agile manner.

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

Beatrice Wishart (Shetland Islands) (LD): Good morning. Once the targets have been set, will the Scottish Government review the biodiversity delivery plan to ensure that it is aligned and is capable of delivering the targets?

Gillian Martin: The delivery plan and all the other policy strategies around it have been set out with the bill in mind. This part of the bill covers the

statutory target-setting aspect, which reflects the work that we have done on strategy and policy. The biodiversity delivery plan is a living document. Everything to do with biodiversity, by its very nature, has to be iterative, because it responds to evidence and data, as I mentioned in my previous answer, and to changing circumstances. We have to consistently monitor issues that affect particular species and habitats or which result from climate change and other impacts. If some areas of the plan are not strong enough to address the evidence that comes through, of course they will be changed.

Once the targets have been set, we will look to see whether the actions in the delivery plan and the policies in the biodiversity strategy will be sufficient to enable us to deliver on them.

I think that I am saying yes, but in a very roundabout way. I am giving you an idea of how agile we are in this area.

The Convener: I call Emma Harper.

Emma Harper (South Scotland) (SNP): I am just checking where we are. Is it question 3?

The Convener: I think you wanted to ask a supplementary.

Emma Harper: Actually, I am fine.

The Convener: In that case, we will move on to Evelyn Tweed.

Evelyn Tweed (Stirling) (SNP): Good morning. Thank you for your answers so far.

Public bodies will be key to the delivery of the Scottish ministers' targets, but they will not have a legal duty to meet the targets. How will ministers ensure that public bodies contribute to the targets to ensure that they are meaningful?

Gillian Martin: Public bodies already have duties in this area. The Wildlife and Natural Environment (Scotland) Act 2011 made it a requirement for public bodies to report on their compliance with the biodiversity duty. That has been happening for 14 years. Every three years, all of Scotland's public bodies have to produce such a report, together with an associated action plan. Bodies such as Scottish Water, SEPA, Scottish Enterprise, Registers of Scotland and all the local authorities already have that duty.

If we found that the action plans were not being delivered on, I would be open to investigating that further. My team regularly scrutinises those action plans and the policies that public bodies have set out to address the biodiversity situation. We need to address delivery on the action plans, but public bodies already have a duty in relation to biodiversity.

Evelyn Tweed: Do you think that public bodies will contribute meaningfully to what the Scottish Government is trying to do?

Gillian Martin: They have to. It goes back to my point that the Government cannot do this alone. The reach of public bodies and local authorities extends throughout Scotland, and their actions affect the whole of the country. They make decisions that affect biodiversity. References to councils' duties on biodiversity and emissions reduction are woven throughout the national planning framework. In planning cases, councils are not allowed to make decisions that would threaten the climate change objectives or the biodiversity objectives. In fact, they actively have to build in action to improve resilience in relation to biodiversity and to reduce their carbon footprint.

We are keen to continue to review that. As I said to Beatrice Wishart, the biodiversity delivery plan is an iterative piece of work. Everything to do with nature, climate change and the environment cannot be set in stone and put on a shelf for ever, because things change. The nature of those issues is such that we must be adaptive.

I am always looking to ensure that the duty that we have placed on public bodies is as effective as possible. We did not think that legislative changes to that duty were needed, because it already exists, but we must scrutinise the effectiveness of the action plans associated with the reports on compliance with the biodiversity duty. That is work that we need to do.

It goes back to the convener's central point that we have not been able to halt biodiversity loss through other methods. The biodiversity strategy has been in place since 2011, and we need to ensure that it is strong and robust, and that it focuses on delivery.

Evelyn Tweed: Concerns have been raised with us that the "status of threatened species" topic in the bill is too narrow and that a broader focus on species distribution and decline is required. What would you say to that?

09:30

Gillian Martin: I recognise that some stakeholders, and people who have given evidence to the committee, have expressed that there is potential for a narrow interpretation. I will take you through how the topics were arrived at. They were recommended in expert scientific advice that was provided by the biodiversity programme advisory group—for brevity, I will call it PAG from now on.

The group comprised a panel of experts and was chaired by the Government's chief scientific adviser for environment, natural resources and

agriculture. It advised on all three elements of the strategic framework for biodiversity, and the bill includes the group's recommended topics for which we must have specific targets. The bill also contains the power to add other topics. What stakeholders say on that aspect is interesting, and it will be interesting to see, in future years, whether we require to add other topics.

On the particular topic that you mentioned, which is the status of threatened species, we felt that it was important that it was the status of species, not the rarity, that had to be considered. That effectively meant that it would cover more than just rare species, including species that are under threat now and those with declining populations, which might not be classified as rare but are under threat. We might be seeing a threat to their existence, or they might have restricted genetic diversity. They might be under threat because of impacts on their habitat or food chain. There might be impacts from other factors, such as has happened with avian influenza whereby pathogens have devastated particular species.

We wanted to ensure that we had—and PAG advised us to have—a broader definition, because we did not want to exclude certain species. We do not want species to get to the point at which they are rare; we want to be able to intervene at the point where we see threats to them. That is why there is a broader definition.

Evelyn Tweed: Given the concerns, might you be open to making changes to the topics in the future?

Gillian Martin: Yes. As I said, the legislation has been drafted in a way that allows us to modify the topics and add other topics. It is important to recognise—I am not telling the committee anything that it does not realise—that threats can come to species and changes can happen very quickly. Climate change can have an effect on a particular species very quickly, and the displacement or removal of a species' feedstock into other waters can have an effect. There may be an explosion in the population of a particular predator, and that could have an impact on a species very quickly. That part of the bill allows for agility—I will keep on saying that word—to be able to respond to things and to look at the evidence and the trends, and the pressures that particular species are facing.

Evelyn Tweed: That is me done, convener.

The Convener: Thank you. It was remiss of me not to mention that we have been joined by Mercedes Villalba, who will ask some questions towards the end of the session. Welcome, Mercedes.

I also missed out Tim Eagle, who has a supplementary question on ensuring that public bodies contribute. Tim, I will bring you in now.

Tim Eagle (Highlands and Islands) (Con): Good morning. I want to go back to Evelyn Tweed's point about the duty on public bodies. Something that was just expressed and which has been picked up on a lot in evidence is that the duty has just not worked—it has not been taken forward in the way that we wanted.

I am conscious—I think that this is hot off the press—that the Environment (Principles, Governance and Biodiversity Targets) (Wales) Bill has recently been introduced. That bill has some interesting ideas about how—I have written it down—the Welsh Government will create a statement that will inform public bodies how they have to comply with the duty. The bill will give the Welsh Government the power to designate a public body to meet a particular target, impact, or whatever it might be. Did you have any cross-Government discussions with the Welsh Government on what it is doing? Are those things that you might consider doing here, in Scotland?

Gillian Martin: I often have discussions with the Welsh Government on a range of subjects in the portfolio. I am interested in your suggestions. The beauty of the relationship between the Welsh and Scottish Governments is that we often learn from each other and take on each other's good ideas.

I am alive to Tim Eagle's point that local authorities may be delivering on reporting but might not be taking the associated actions that are identified in those reports. Having 32 local authorities across Scotland means that there will be different ways in which each local authority can contribute or not—we want to get rid of the "or not". There will obviously be different actions for Highland Council, the islands councils and Glasgow City Council, but we want to make sure that their actions are proportionate and relate to areas in which they have identified that they need to go further.

The Welsh idea is interesting. Their bill will create a duty for the Welsh ministers to give guidance and direction to particular local authorities. We need to make sure that Verity house is always taken into account—local authorities are in charge of their own destinies and we do not want to dictate what actions they have to take on the ground. However, there is already a statutory duty on them to report and to put their action plans in place. I will take away what you have mooted. I was in a meeting with the Welsh Government just yesterday. I imagine that, in the next couple of weeks, I will have the opportunity to speak to it again, and I will certainly look at some of the provisions in its bill.

Tim Eagle: Excellent—that was going to be my follow-up question. I am not necessarily expecting you to be able to give a comment on that right now, because the bill was only introduced on

Monday, but I presumed that you might have had conversations in the background. The point is that we have been hearing that some public bodies need a bit more detail about what exactly you are looking for them to do. That could be in the bill. You said that you would take the point away. Will you give a commitment to write to the committee to let us know what your thoughts are on that, so that we can understand your position?

Gillian Martin: Absolutely. I will also be in front of you at stage 2. Members who know me and who have been through other bills with me will know that my door is open to any members who have suggestions on how bills can be strengthened. If there is anything in the Welsh bill that you think the Scottish Government should put in this bill, by all means come and speak to me about it, because we can maybe work together on something. It does not have to be just the Government that lodges amendments; it can be members as well. I enjoy working cross-party with members to make bills stronger.

What Tim Eagle has just suggested makes sense on the surface, because delivery has to happen at a local level and in a pan-Scotland way. It cannot be about a centralised document that sits in the Scottish Parliament. Delivery on these very ambitious objectives rests on all the public bodies and on our citizens as well.

The Convener: That is useful, because the Welsh legislation is fairly fresh, and I am sure that you will need to look at it in a bit more detail. It would be helpful to get information on any amendments that you are considering lodging to reflect some of the good stuff from that bill.

You touched on the PAG advice that you received relating to the target topics. Could you share that?

Gillian Martin: I do not see why not—I am just looking at my officials. The advice that PAG gave us is very robust. I am getting the nod from Lisa, so we will of course pass it on.

The Convener: Do you expect any other advice to come forward relating to targets between now and the end of the bill process?

Gillian Martin: The team is working on secondary legislation on targets; that work will not wait for royal assent and is already in train—we are looking at it. The words “agile” and “iterative” seem to be my catchphrases. That work is happening because we want—at the start of the next parliamentary session, I imagine—to be able to put the targets out for scrutiny.

The Convener: Any information about further advice would certainly be helpful to the committee. Whether it is published or in a letter to the committee, that would be appreciated.

Lisa McCann (Scottish Government): I can confirm that we have committed to publishing the PAG advice; we are just preparing it so that it is ready to be published. We will continue to maintain transparency on the advice that we receive and ensure that it is publicly available. We have plans to engage with stakeholders to ensure that they have good visibility on the expert advice that has led us to drafting the bill in the way that we have. The suite of secondary legislation is under consideration, as the cabinet secretary has said.

The Convener: That is very helpful. Thank you.

Rhoda Grant (Highlands and Islands) (Lab): You mentioned that things can change very quickly and that there is a need for flexibility to act to deal with that. Would it be better to have something in the bill about, say, species control areas, whereby, for a limited time, if you saw a non-native species arriving and causing an issue, you could designate an area to deal with it? Such powers could be in the bill but used in a more open and transparent way.

Gillian Martin: I am open to exploring that if you want to take it forward. I think that you are right. The nature of climate change means that species are arriving in Scotland that we have never seen before. The danger is that some of them might be causing a threat to biodiversity; some of them—some insects, for example—might even cause a threat to human beings. There are also pathogens associated with some of the smaller species that arrive; for example, there are the various strains of bird flu that have been adapting and changing. If you want to speak to me about something like that, I would be open to exploring it with you, and my officials can take it away and look at it.

Leia Fitzgerald (Scottish Government): We are very alive to the risk from invasive non-native species, and work is being undertaken on that. The Scottish Government will consult on a draft plan on non-native species, with the aim of publishing a final plan later this year.

The Convener: Thank you. That is helpful.

Mark Ruskell (Mid Scotland and Fife) (Green): I want to come back to threatened species status, cabinet secretary. You described the need for a bit more latitude in the way that that is interpreted. In your letter to the committee you said that that could be put in place, either in the explanatory notes to the bill or in the bill itself. Would you consider an amendment in that regard, perhaps one that covers species that are in decline as well as those that are threatened?

Gillian Martin: You and I have worked closely together on other bills and we have been able to discuss amendments that you might want to lodge. My overall point is that the bill allows future

flexibility by providing a power to add to the list of target topics. What is in the bill is what we were advised by the PAG to include. However, once the bill is passed, the door is not closed; there is the ability to add other topics. Indeed, there were some topics about which the PAG said that it did not have the necessary evidence base or information, so it asked for those not to be put in until it had more information. Maybe Lisa McCann can flesh out a little of the detail of that.

09:45

Mark Ruskell: Does that include ecosystem health and integrity?

Lisa McCann: Yes. The advice that we received from the PAG was that we do not yet have the right set of indicators in order to adequately measure those topics, but work is on-going to determine what the right indicators are. Lots of indicators are in development that might be ready at some point soon, so the topics remain under live consideration, but it did not feel appropriate to put them into the bill just yet, because we do not have the right way to measure them.

Mark Ruskell: Could a trigger mechanism be put into the bill on that topic in particular, so that it is not left hanging for lack of evidence, and there is a clear pathway? We all know that ecosystem health and recovery is hugely important. It would be nice to put a target on it. If we do not have the data yet, when could that be?

Gillian Martin: Do you mean the trigger of a certain date or a certain circumstance? The bill's proposed new section 2E(5) of the Nature Conservation (Scotland) Act 2004 already allows ministers to add to the target topics. A time trigger, for example, would not be the right way to do it, because, as Lisa McCann has just said, the addition will be based on the development of the indicators. The advice that the PAG has given us is to develop those indicators. Then, at a point at which it is satisfied, the target can be added. There is not much point in having a target on which we cannot measure progress. There is no resistance to putting more targets in. It is just a case of wanting to put in targets for which we have the evidence base, the indicators and the prospect of being able to measure our success or otherwise.

Mark Ruskell: Perhaps developed indicators could be the trigger.

Gillian Martin: Can I take that away? I do not want an arbitrary trigger that would leave us in the same situation of having a target that is not measurable. Maybe we can bottom that out. I will speak to my officials, and we can speak about whether that is doable.

Emma Harper: Good morning. We have been talking about triggers, targets and flexibility in this framework legislation. Yesterday's Health, Social Care and Sport Committee heard Professor Sir Gregor Smith talking about future pandemic preparedness. Avian influenza came into that, as did invasive species—for instance, issues around diseases and viruses that mosquitoes carry. Gregor said that the chief veterinary doctors are now working with human doctors to look at how we need to be flexible and dynamic in order to plan for whatever is in the future. I am thinking about that as one way in which the bill is about being flexible, dynamic and able to adapt, especially given the fact that I sit on the HSCS Committee as well as this committee, and there is a lot of crossover in our thinking about how we support climate change issues.

Gillian Martin: You mentioned the pandemic. That was an example of our having to look at some of our legal mechanisms, which were not responsive enough. Obviously, we had quite a lot of things with sunset clauses and so on, but that is just an indication of something that happens very quickly and needs to be responded to very quickly. The word "dynamic" is better than "agile", because Parliaments and Governments need to be able to respond to things. The very nature of climate change, in particular, means that things happen that we have not seen before. Maybe some species that we have not seen before arrive in Scotland, and some of the species that we had protected are no longer in the protected sites that we created, because nature changes, moves and adapts to environmental circumstances.

It is interesting that you have linked that with human health. We do not talk enough about how biodiversity and nature are inextricably linked to human health. If we do not protect species in Scotland, we put in jeopardy our food systems and the health of the environment that we depend upon if we are to be healthy. That is an interesting analogy.

Emma Harper: The question of additional target topics was touched on earlier. Scottish Environment LINK suggested additional topic areas, such as invasive species, being included in the bill. What are your thoughts about that?

Gillian Martin: Obviously, I have already talked about the provision that will allow new topic areas to be included in the legislation in the future.

We decided that we would go for including

"the condition or extent of any habitat"

as a target topic. That resulted from the merging of two separate topics—habitat condition and habitat extent—on the basis that we did not think that condition alone would demonstrate whether the outcomes of the biodiversity strategy would be

achieved. Habitat condition and habitat extent were therefore merged to become the single target topic of

"the condition or extent of any habitat"

as recommended by the PAG.

I think that Scottish Environment LINK also mentioned ecological connectivity. We did not include that as a specific target topic because of the need to select and consolidate target topic areas. However, ecosystem integrity was seen as a high-level, scalable topic.

Scottish Environment LINK and other stakeholders have all said that they would like to see various topics in the bill. There are two points to make about that. We have made sure that our topics are broad enough to include some of those suggestions, but we are not ruling out any topics, should we have more robust indicators in future. I hope that that explains that we have chosen the topics based on the independent advice of the PAG and on the topics being broad enough to incorporate many of the concerns of stakeholders—and all of us—about what we need to measure. We also have the flexibility to scale up those topics or to add topics in the future. I hope that I have given the committee the confidence that that is available.

Emma Harper: I hear that it is about flexibility, being agile and dynamic, and allowing that adaptability in the bill.

Gillian Martin: Yes, and it is about being responsive to changes in nature and better data collection, better evidence gathering and improvements in some of the technology that is associated with that.

Rhoda Grant: Would the bill benefit from the inclusion of a collection of target-setting criteria such as those that were included in the climate legislation, which could set the parameters for those targets? That was suggested by Open Seas.

Gillian Martin: There are already criteria associated with target setting. I will take you through that. The 2023 consultation was used throughout the development of targets. The criteria to be taken into account in the selection of targets are alignment with the Scottish biodiversity strategy high-level goals; alignment with the global biodiversity framework; alignment with European Union environmental standards, including those on nature restoration; and synergy with existing and forthcoming Scottish legislative frameworks and strategies.

I refer back to my point that targets do not exist in isolation but follow a lot of other policy development. We want to align with the global biodiversity framework and with European Union environmental standards. We are mindful that our targets have to galvanise cross-portfolio work across Government and cross-sectoral work across Scottish society, and they have to be measurable, achievable and realistic.

Those are the target-setting criteria that we have been using. Will we continue to develop the criteria? Yes. I come back to the words "agile" and "responsive". I am not quite sure what Open Seas was thinking, but perhaps it has particular things in mind that it wishes to see as the criteria. I am, of course, happy to meet its representatives and those of any ENGOs about what those could be.

Rhoda Grant: Are you saying that the bill will not bring something new to the table but will pull together various other bits of legislation in order to set targets?

Gillian Martin: No. The target-setting criteria are as I laid them out. We want alignment with the biodiversity strategy and the global biodiversity framework. The target-setting criteria were set out for the bill, with all the alignments. There had to be criteria for setting the targets. It is not a case of not bringing anything new; it is about the target-setting criteria being interwoven into all the other biodiversity goals, outcomes and frameworks to ensure that the targets are robust, measurable, realistic and achievable.

Rhoda Grant: So, it is about co-ordinating the other pieces of legislation.

Gillian Martin: Yes—exactly. I come back to the point that we cannot just set arbitrary targets; there have to be criteria behind the targets, and they have to be grounded in all the other strategies that have been followed to get us to 2030, to halt biodiversity decline, to become nature positive and to have species restoration by 2045.

The Convener: I call Tim Eagle.

Tim Eagle: Hang on a second and I will bring up the right page.

Cabinet secretary, there was a consultation in 2024 in which you asked for information on what could be done to change what proposals could be made to change designated sites, but none of that really features in the bill. What are your thoughts on that consultation? Why did you not bring some of its discussion points into the bill?

Gillian Martin: Let me have a look. [*Interruption*.]

Tim Eagle: Have I asked the wrong question, convener?

The Convener: It is a perfectly valid question, but I think that you have jumped into part 2 of the bill.

Tim Eagle: Oh. Where was I meant to be?

Gillian Martin: That is why I was a bit confused.

The Convener: I think that we had another question on—

Tim Eagle: Sorry. My problem is that I skipped a question because you brought me in earlier, convener, on question 8. I retract the question that I asked and will come back to it in about an hour's time.

The Convener: I call Beatrice Wishart.

Beatrice Wishart: Cabinet secretary, you have spoken a lot about being agile, flexible and responsive. However, some witnesses have said that 10 years is too long to wait for a review of the targets and that more responsive measures should be built into the bill. There has been a suggestion that Environmental Standards Scotland should be able to trigger a review if targets are not on track. What is your response to such suggestions?

Gillian Martin: The bill does not say that reviews must be carried out every 10 years; it says that they must be carried out "not less than" every 10 years, so there is flexibility.

Environmental Standards Scotland is already the body that can advise us on bringing forward any review of targets. We set ESS up to be an independent advisor to us on whether we are meeting certain Government objectives and whether our legislation and policy direction in the area are working. I would have thought that ESS has the ability to advise that we review our targets anyway, but I can take the question away and bottom out with my officials whether it actually has that capacity or power, if you like.

10:00

It comes back to the whole responsiveness thing—if it looks as if targets are perhaps not as robust as they could be or they need looking at again, should it be our independent body, ESS, that is allowed to say to the Government, "We want to see a review of that target"? However, nothing in the bill says that there has to be a review every 10 years. That is a minimum. The targets have to be reviewed "not less than"—that is legal-speak—every 10 years. I will take the question away and look at whether Environmental Standards Scotland has the ability to hold us to account in that way, but it seems reasonable to me.

Beatrice Wishart: Will you write to the committee on that?

Gillian Martin: Yes. You are also welcome to come and speak to me if you want to raise anything before stage 2 to bottom out that particular issue.

Beatrice Wishart: Thank you.

The Convener: Cabinet secretary, in a different life I was your deputy convener on the Environment, Climate Change and Land Reform Committee in the previous session—

Gillian Martin: Happy days.

The Convener: I have fond memories, of course. I remember talking then about the way that biodiversity data was collected, and I recall that, at that time, it was a bit ad hoc. It was collected on a website that had been developed by some Australian organisation. It will be fundamental that we collect the right biodiversity data to ensure that it supports the monitoring of targets and how we move forward. However, there is no cost associated with collecting that biodiversity data from associated organisations and from the community of organisations that will be tasked with collecting it. That is outwith the likes of ESS and the Scottish Government. How do you see those organisations being funded to ensure that we get the right data collected in order to support the effectiveness of targets?

Gillian Martin: As you rightly say, it comes back to partnership working and the co-ordination of data. We have identified that there are a few streams of work in some of the bodies that already exist in Scotland, such as NatureScot, which is supporting local environment record centres, for example. It has a budget associated with that of just over £220,000. We engage with and collect and use data from our academic institutions, which are already funded by the public purse. Data also comes in from various third sector organisations, which might involve citizen science as well. We can look at impact assessments, particularly for the target setting, and whether any additional funding is needed once we have set the targets.

It is important to mention that it is not just the bill or my portfolio that have actions to improve data. I am particularly pleased that, recently, the Cabinet Secretary for Rural Affairs, Land Reform and Islands and I have jointly budgeted for light detection and ranging data to be collected across Scotland. I am very excited about what the surveys that have been done as part of that will yield. I believe that the planes have already been out to record data on what is actually happening in Scotland's landscape. That will inform a lot of the work that we do on biodiversity, peatland restoration, the health of some areas and the forestry that is associated with some areas.

It is not just in the bill that there is spend. Data is associated with the actions that the nature restoration fund generates, too. If anything specific arises as a result of the target setting that happens under secondary legislation, we would, of course, have to look at how we would fund it.

The Convener: A lot of data is collected at the moment and a lot of that comes from the private sector, including marine data from fishermen and data from members of Scottish Land & Estates who are looking at biodiversity from their perspective. There are some data standards, but the data is not all collected and published in the same way. I do not think that it is unreasonable to suggest that, in order for you to get the best value out of that data, some capacity will have to be created to bring it all together and ensure that it is all published in the same format. Baselining, whether that is of LiDAR data or data that is collected from private organisations, will be critical.

Will you reflect on the potential cost of that before we get to stage 2? We know that the data is there, but it will all have to be brought together to ensure that it is in an easily understood format.

Gillian Martin: I remember our discussions about that when we were on the committee together in the previous session. Private organisations can volunteer to give us their data. You spoke about the marine environment. We have been involving more fishers in collecting data that is associated with marine protected areas and fisheries management measures, and the Scottish Government is working on vessels with fishers. We also have connections with offshore wind developers and others who work in the marine environment.

You are absolutely right that no holistic system really exists, but I will probably be able to get back to the committee about how we look to manage that data.

The costs that are associated with the bill do not reflect the spend across the whole of Government on critical endeavours in the rural affairs space. We will take away your point that there is lots of data out there but it is not co-ordinated. To go back to what Lisa McCann said about indicators, it is critical that we have robust data in order to develop the indicators for targets.

Mark Ruskell: Why are the goals for 2030 and 2045 not in the bill?

Gillian Martin: I do not think that they need to be. The goals are already in the biodiversity strategy and they are stated intentions in all the policy documents. They are part of the ambition that we are working towards. My initial reaction is that I do not think that goals and ambitions fit well in legislation, which is the place to put the actions that are associated with those goals.

I am open to suggestions that references to the global biodiversity framework could be part of the criteria for target setting and to suggestions about adhering to standards, but I am not sure how appropriate or meaningful the idea of ambition is.

Mark Ruskell: Is there any point in signing up to the global biodiversity goals for 2030 and 2045 if those are not reflected in legislation? The Government seems to be saying that the 2030 goal is lost and that we will do what we can through biodiversity action plans and strategies but we have no chance of meeting that target. It also seems to be saying that we might meet the 2045 target but we should not put it in legislation, because that would bind the Government to action that is beyond what we can actually achieve.

I am trying to understand the thinking behind that. Does it make sense to have such a target if we cannot meet it? If we have such a target, why not put it in legislation?

Gillian Martin: Because it is a goal.

Mark Ruskell: It is nice to have, but it is not something that you want to be held to account for.

Gillian Martin: It is not just nice to have; it is important to work towards it, but it is in setting the topic targets that the action actually happens. Let me take that idea away. As I said, Environmental Standards Scotland can already advise us on bringing forward any review of targets.

Mark Ruskell: But would you be up for reflecting in some form somewhere in the bill the international commitments that the Government has signed up to?

Gillian Martin: Let me take that away.

Mark Ruskell: Okay—have a think about it.

I want to raise a couple of other issues that are not included in the bill. We have an on-going issue with marine enforcement. We have marine protected areas—lines on the map—but enforcement is very difficult to achieve. In a recent example, somebody who dredged for scallops in an MPA was given a fixed-penalty notice but sold the scallops for more than the fixed-penalty notice was worth. There seem to be some fundamental issues around enforcement, fines and so on. There is nothing in the bill on enforcement, but is this an opportunity to look at that?

Gillian Martin: That is not within the scope of the bill, but I would be happy to talk to you about it. I am sceptical about whether it is an issue for the bill. We might be able to do something more agile.

Mark Ruskell: Rhoda Grant raised the issue of invasive non-native species. I can barely remember this, but I think that INNS came up in 2004, in the Nature Conservation (Scotland) Bill. In fact, I might have lodged an amendment on the issue, back in those early days. The issue is getting worse. I have become aware of NatureScot's powers to access sites, emerging issues around the expansion of Sitka spruce into native woodland restoration areas and growing

issues around a pheasant population that is exploding. Those were not necessarily huge issues 20 years ago, but there are now big issues to do with INNS that could restrict our ability to restore ecosystems. Would you be open to looking at those issues in the bill? It feels like this is an opportunity to make a change, given that the previous bill that considered INNS was in 2004—a long time ago.

Gillian Martin: I do not want to be prescriptive about particular actions. I want the bill to give us agility in the way in which we address issues, and I am absolutely open to scrutinising how the bill, as it is, could allow more targeted action. However, there are a number of provisions in the bill, particularly in part 2, that will allow us to be more fleet of foot in how we deal with emerging and changing issues. I can come on to this when we talk about part 2, but I included part 2 to give us that responsiveness and agility in a number of areas. That will mean that we do not need to wait for primary legislation to be able to deal with an emerging situation or a trend that we have identified and which needs attention quickly.

Mark Ruskell: Okay. If there is a way to introduce some agility into the bill now to sort an issue in future, that would be worth having a conversation about.

Gillian Martin: A lot of the provisions in part 2 will allow us to do that. I am open to that because it is a real concern. We depend on quite a lot of volunteers to manage some areas, particularly our river banks. It may be that, in the associated action plans, local authorities need to pay more attention to things that are happening in the invasive species realm. However, I will not commit myself to anything. We can have a chat about that.

Mark Ruskell: I understand that there is a crossover between the strategy, the delivery plans and the bill, but if there is something in the law that prevents action from being taken in a delivery plan, this would be an opportunity to fix it.

Gillian Martin: We can have a look at that.

Mercedes Villalba (North East Scotland) (Lab): Good morning, cabinet secretary. I have three question areas, if that is okay. I will see how we do for time.

The first is about the purpose of the bill. The explanatory notes say:

> "The primary duty is to set targets in connection with nature restoration for the purpose of supporting and measuring implementation of the biodiversity strategy".

A concern has been raised with me that, by linking the purpose to the biodiversity strategy, we potentially create a loophole whereby a future Government could water down the biodiversity strategy. The purpose of the targets would then be to support something that has been watered down, instead of whatever the overall aim or goal is—restoring the natural environment or whatever form of words the Government chooses to use.

10:15

Is the cabinet secretary open to looking at that potential loophole and at a way of tightening up the language to make sure that the purpose of the targets is to support the goal, as you have referenced already, and not an external strategy that is not legally binding and which could be watered down by a future Government?

Gillian Martin: I will say a couple of things on that. The targets themselves are very robust—there will be legally binding targets associated with the goals that feed into the biodiversity strategy. The high-level purpose is to align with the biodiversity strategy, but that informs the secondary legislation and the targets, so they would be binding.

None of us has control over who forms the next Government; the people of Scotland do. You would hope that biodiversity is so important to the people of Scotland that they would not elect anyone for whom biodiversity was not a consideration. We cannot future proof any legislation against future Governments coming in and overturning it or bringing in new legislation that rescinds some of the goals of the previous legislation.

I think that we are going about this in a robust way. The biodiversity strategy has been laid out. It informs the target setting, as does the advice that we have from the PAG, and the targets are set in secondary legislation. It is up to the Parliament to decide what goes through. A future Government that wants to rip up this bill or the biodiversity strategy would be scrutinised and held to account in doing that. That is parliamentary democracy—that would be my answer to that.

If there are suggestions on strengthening the language, that is what stages 2 and 3 are for, and I am happy to consider anything. However, I do not think that there is a particular risk with this bill in comparison with any other piece of legislation that we have ever passed in the Parliament. Legislation is always subject to change based on who is next in government.

Mercedes Villalba: Thank you. My next question relates to invasive non-native species, which Rhoda Grant and Mark Ruskell have already picked up on. As Mark Ruskell said, we have relatively strong legislation on invasive non-native species—it is illegal to release any species outside its natural range—but there are two key areas in which blanket exemptions to that legislation risk undermining progress and

damaging the natural environment. They are the lack of regulation on non-native game bird releases, which Mark Ruskell mentioned, and the exemption of non-native commercial conifers. Both of those are exempt from the polluter-pays principle.

Is the cabinet secretary open to revisiting those exemptions through the bill, so that we can help to drive effective action on invasive species in order to prevent further biodiversity loss?

Gillian Martin: Certain elements of what Mercedes Villalba talks about, such as the release of non-native game birds, are not covered in the bill. We wanted to keep the targets and the habitats regulations as the main part of the bill, and we do not have any plans to do anything on the release of non-native game birds. However, the target topics allow us the capacity to deal with invasive non-native species more generally, both at the moment and in the future, as the targets are set.

The bill is not prescriptive to that level of detail on actions. It provides the ability to set targets, which can be quite broad in nature and under which actions can sit. Invasive non-native species will have an impact on the health of a habitat or an ecosystem. That is why the PAG advised us to have those broad target topics. What you ask about is not ruled out; it is just not specified in the legislation.

Mercedes Villalba: My final question also relates to invasive non-native species. They are a principal driver of biodiversity loss globally, they are an intensifying issue in Scotland and they are having particularly serious impacts on islands. I am thinking specifically of projects involving highly mobile species, such as the Orkney Native Wildlife Project, that the Scottish Government funds.

Does the cabinet secretary believe that the current legal arrangements for tackling invasive non-native species are adequate? In particular, can operational staff access land with sufficient speed to eradicate highly mobile species? My point relates to Rhoda Grant's earlier question about designating particular zones so that, where there are highly mobile species, operational staff can get access to land in order to carry out eradication.

Gillian Martin: The Orkney situation concerns the stoat population. Let me take that away and look at it.

The "Scottish Biodiversity Strategy Delivery Plan 2024-2030" includes a duty to

"implement the Scottish Plan for Invasive Non-Native Species ... Surveillance, Prevention and Control, and secure wider support measures to enable ... removal at scale."

Therefore, that duty already exists. I am aware of the Orkney issue, but I need to take that away and look at whether it needs to be addressed in the bill or whether we already have the legal mechanisms to do that.

Mercedes Villalba: Thank you. I would like to take you up on the offer to meet to discuss the matter ahead of stage 2.

Gillian Martin: Of course.

The Convener: We are not too far behind time, so we will suspend for 10 minutes for a comfort break.

10:22

Meeting suspended.

10:32

On resuming—

The Convener: Rhoda Grant will begin our questions on part 2 of the Natural Environment (Scotland) Bill, which is on the EIA legislation and habitats regulations.

Rhoda Grant: If we bear in mind that delegated powers already exist in this area, why is a new, single, overarching power needed to enable Scottish ministers to modify Scottish EIA legislation and the habitats regulations?

Gillian Martin: I will speak to that fundamental point. As you have rightly said, there are already habitats regulations that contain minor amending powers, but they are very limited. They allow Scottish ministers to amend only the list of protected species, the additional list of wild animals that cannot be lawfully taken or killed and the prohibited methods of taking or killing animals. Beyond that, they do not have the flexibility that is needed to adapt to future circumstances of the sort that we mentioned in relation to part 1.

The bill provides a bespoke power that is tailored for Scotland to modify the habitats regulations and the legislation that forms the EIA regime, and, critically, it plugs a legislative gap that exists as a result of EU exit. The bill will allow the Scottish Government to respond to evolving circumstances; to be dynamic and agile in response to particular changes, needs, trends and impacts; and to maintain and advance environmental standards, responding to decisions that have been made in the past that are no longer relevant.

It is really important to note that the bill also provides protections. The power may be used only when Scottish ministers consider that doing so would be in accordance with certain purposes, which I will set out for the committee.

First, the power may be used

"to maintain or advance standards in relation to—

(i) restoring, enhancing or managing the natural environment,

(ii) preserving, protecting or restoring biodiversity,

(iii) environmental assessments".

It may also be used

"to facilitate progress toward any statutory target relating to the environment, climate or biodiversity that applies in Scotland",

"to ensure consistency or compatibility with other ... Regimes"

or

"to take account of changes in technology or developments in scientific understanding".

That brings me back to the point about data and evidence as well as the point about the technology associated with assessing impacts on the environment.

The power may be used

"to resolve ambiguity, remove doubt or anomaly, facilitate improvement in the clarity or accessibility of the law".

That goes back to Mercedes Villalba's earlier point about the ability to resolve things that are not ambiguous in the law but which are not actually working. Finally, the power may be used

"to improve or simplify the operation of the law."

The existing powers do not allow us to do any of that. I am proposing the power, because we need that agility, particularly to respond to the impacts of climate change. If we consider habitats in general, is primary legislation required to put in place special protection areas? I look to my officials for an answer.

Stewart Cunningham (Scottish Government): No. Special protection areas would be designated under the habitats regulations.

Gillian Martin: Right. However, if we can use the proposed power, we will be able to be agile. We could have a situation in which a particular designation is out of date, because the circumstances on the ground have—literally—changed. Maybe the designation was there to protect a particular species or ecosystem where there was a threat to the environment, but that has changed. Maybe the species that were associated with the designation have moved further north or to another area as a result of climate change. The power will give us the agility to act in those areas, too.

The purposes that I mentioned are important safeguards, because we could not use the power willy-nilly. The reason will have to accord with one of those purposes.

Rhoda Grant: Okay. We have had evidence that we already have that flexibility in the existing regulations. Are you saying that there was that flexibility in the regulations but it is no longer available because of EU exit, or are we getting contradictory evidence on that point?

Stewart Cunningham: When we were part of the EU, we implemented EU obligations through the habitats regulations. There are no provisions in the current habitats regulations to de-designate sites, amend the boundaries of sites or remove features from sites. Stakeholders have highlighted regulation 9D, but the Government has a different interpretation of what that allows. In our interpretation, flexibility around protected sites is not possible within the regs as they are currently drafted.

Gillian Martin: When I was preparing for this, it was put to me that the simplest way to deal with this was to have a bespoke power for Scotland. If we do not have that, the standards and the legislation that we have, which are associated with EU legislation, will, in effect, be frozen at the time of the UK's exit from the EU, and we will not be able to adapt beyond that. That is why we are looking to the bill to fill that gap. It means that we will be able to adapt to future circumstances and even to some present circumstances, many of which I outlined earlier.

The Convener: Tim Eagle is next.

Tim Eagle: Is this the right time for me to ask my question? [*Laughter*.]

Gillian Martin: We will find out.

The Convener: If you ask it, I will tell you whether it is the right time.

Tim Eagle: Actually, convener, can I come in later with question 17? I think that my supplementary question relates to that.

The Convener: Certainly.

I have a supplementary on the proposed power. In the evidence that we have heard up to now, the NGOs have almost without exception said that the power is like a sledgehammer to crack a nut and that the flexibility already exists.

The only organisations that appear to support the Government's introduction of this overarching power are Government organisations and public bodies. Why is it the case that all the NGOs think that the power goes way too far and that there is a lack of safeguards? You have talked about safeguarding things for the future, but we need to think about which Governments might be in place in a few years' time and ensure that safeguards are there. Why does the Government feel that the proposed power is required but nearly every

organisation other than the public bodies thinks that they are not?

Gillian Martin: That is something that I want to discuss with them. I will work with stakeholders on their understanding of what we are trying to do.

I have laid out the protections that exist in relation to how the power could be used. The intention behind the power is in no way to dilute environmental protections; it is to enable us to adapt and improve environmental protections in a changing landscape and environment, and to ensure that we are not frozen in time.

I set out the restrictions that exist in relation to the 1994 habitats regulations. We need to be responsive and adaptive to new data, new evidence and changed circumstances—for example, by modifying the boundaries of protected sites or taking away protected site status where it is no longer needed and applying it to another area where it is needed. We need to be able to be fleet of foot in that respect. I think that I have perhaps not communicated the importance of that well enough to the environmental NGOs, and I want to have those conversations with them and give them assurances.

In response to your point about future Governments, I go back to what I said to Mercedes Villalba: Parliament holds Governments to account. The areas in which a Government would be allowed to use the power in question are quite limited. The power is binding in that regard. It would not allow future Governments to dilute anything.

The purpose of the provisions in part 2 is to get us to our goal of halting biodiversity loss as soon as possible and regenerating nature by 2045. I would not put anything in the bill that does not help us to do that.

The Convener: You probably hit the nail on the head when you said that the communication has not been as good as it should have been. When the Government's bill team appeared before us—it seems like a lifetime ago now—the only example that we were given as to why the power was needed related to the ability to use digitised documents as part of EIAs. We were not given any other reasons why the power was needed.

The Government has quite a bit of work to do before stage 2 to communicate to the NGOs why the power is required and what safeguards will be in place. At the moment, some of them are minded to believe that we should remove part 2 of the bill altogether.

Gillian Martin: Can I give you an example? I am in the same position—I am starting to get to grips with what is in the bill and what it does. I have been thinking about real-world examples of what the power would allow us to do and how nature restoration would be inhibited if it were not there.

Let me give you a hypothetical example of an area that had been designated as a special area of conservation, because it included a Caledonian pinewood forest. Over time, because of climate change and changes in nature, oak trees begin to sprout at the warmer end of that forest. Despite the climatic conditions favouring oak rather than pine, we would have to strip out that oak if we did not have the power to amend the habitats regulations; we would have to do so even though the oak was naturally occurring, was sequestering carbon and was part of the changing nature of that site. We would have to get rid of trees because the area had been designated primarily for its Caledonian pine habitat.

The Convener: We heard that there is scope to do that; indeed, that specific issue was raised when we visited the Abernethy estate in the Cairngorms. Questions were raised about designations for open space, while other bodies welcomed having some natural regeneration. There is the flexibility in current habitats regulations to allow for exactly what you have highlighted in your example.

10:45

Gillian Martin: The current regulations have no powers to remove certain features from the reasons for designating a site—that is the issue. The bill will give us the ability to do that and to be responsive to changes in the environment. The example that I have just given is a real-world example of how a site being designated as a European site freezes it in time; that designation was fine for then, but, 20 or 30 years on—whatever it might be—the forest is adapting to climate change, and adapting more generally, too. This is not a case of there being an invasive species; these are naturally occurring changes in the forest. That is a real-world example of where we could be quite fleet of foot in changing the designation of a site, instead of having to wait years to do that. After all, nature itself does not wait.

The Convener: Can that not just be done through guidance, though? It has been suggested that there could be more flexibility by improving the guidance, particularly in relation to adding or removing features or denotifying sites.

Gillian Martin: Our interpretation is that we need to have the flexibility in law.

The Convener: Okay. Thank you.

Mark Ruskell: That is about a very small area, but the provisions in part 2 of the bill are extremely

wide and give ministers the power to gut the habitats regulations should they choose to do so. Nevertheless, I will focus on that very specific example. My understanding is—and the answers that we got from NatureScot the other week suggest—that it is possible to change the designation to effectively redesignate sites if that is required. Under regulation 9D of the Conservation (Natural Habitats, &c) (EU Exit) (Scotland) (Amendment) Regulations 2019, there is a duty on the Scottish ministers to "adapt" the site network.

I appreciate Stewart Cunningham's comment that your interpretation is that you cannot legally do that. However, the Department for Environment, Food and Rural Affairs has just published guidance to change regulations to enable site boundaries and features to be amended. Why is DEFRA wrong and why are you right?

Gillian Martin: I want to take the committee back in the bill to the first purpose of using this power, which is

"to maintain or advance standards in relation to ... restoring, enhancing or managing the natural environment ... preserving, protecting or restoring biodiversity".

The bill says that the power can be used only in that area and in certain other areas, which I will not go through again—they are on the record. None of the purposes are about stripping out and removing environmental protections from an area that needs them. If an area needs those protections, the Government will not be allowed to strip them out, given that purpose in the bill.

I fundamentally disagree with the word "gut"—the bill will absolutely not give anyone the power to do that. In order to change the regulations, a Government would need to have legitimate reasons that were grounded in enhancing and managing the natural environment. The power is focused on improving biodiversity and managing the environment in a way that is nature positive; it is not about stripping, gutting or anything like that. As I said, maybe our communication on this has not been strong enough. That is the reason that the power is in the bill.

Last week, you heard from Brendan Callaghan of Scottish Forestry on that point. He said:

"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 how long it takes to get legislation through. He said:

"It is about good administration."—[*Official Report, Rural Affairs and Islands Committee*, 28 May 2025; c 37.]

It is about agility, responsiveness, working with changing conditions in a way that reacts to them and working with the data and the evidence that are put in front of us, so that it will not take years for us to take action.

Mark Ruskell: The other week, NatureScot said that it could make those changes if there was guidance from the Government. If there is a big issue with features encroaching on to existing designated sites, why does the Government not just issue guidance to NatureScot about how regulation 9D could be used?

It seems that this is the only issue that has come up in committee beyond the submission of PDF electronic documents. I am struggling to hear from any industry sector body how the current provisions of the habs regs are restricting economic growth and other benefits. I am hearing about PDFs and a technical issue about site designation; I am not hearing any other reasons. I still do not understand why this power is needed.

NatureScot says that if the Government gives it guidance, it can act on it. Why are you not giving guidance to NatureScot when DEFRA is clearly giving guidance in England?

Gillian Martin: NatureScot said:

"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."—[*Official Report, Rural Affairs and Islands Committee*, 28 May 2025; c 38.]

NatureScot is supportive of the power.

Our legal assessment is that we do not have the flexibility to be responsive enough to the changes that climate change, in particular, will cause to happen in our natural environment. We would not be putting the provision in—I would not be putting it in—if we had the ability through guidance to meet those objectives. This change and this part of the bill are there to allow us the flexibility to be adaptive and agile in a dynamic situation.

Unless there is any other legal advice that I can get from Stewart Cunningham on this, I am convinced that the power needs to be included in order to enhance biodiversity and allow us to be responsive to what is a literally changeable environment, particularly as a result of climate change. Having this bespoke provision for Scotland in the bill will give us that ability, which we do not currently have.

The Convener: Stewart Cunningham, can you set out exactly what the new regulation that was brought out in 2019, which Mark Ruskell referred to—regulation 9D—does? If it does not give the flexibility that we were informed that it gives, what

does it do that the proposed regulations need to enhance?

Stewart Cunningham: Regulation 9D creates an obligation on the Scottish ministers, in conjunction with other authorities, to contribute

"to the achievement of the management objectives of the UK site network".

It includes a duty to

"manage, and where necessary adapt".

I think that that part of regulation 9D has attracted a lot of attention.

There is a DEFRA policy paper from 2021 that describes what DEFRA thinks the equivalent change in England and Wales allows. However, as both I and the cabinet secretary have said, we have a different view on that. DEFRA has not produced any guidance on how its interpretation would be intended to operate in practice.

When we look at how the process is set out in other nature conservation legislation, such as the 2004 act, where the sites of special scientific interest are provided for, we see detailed provisions about how we can add features or matters to SSSIs and how to remove them. There are detailed provisions on the factors that should be taken into account and who should be consulted if we want to denotify a site, and there is a detailed schedule on other procedural requirements. We think that, rather than us hooking all that process on to the words "where necessary adapt", there needs to be clarity in legislation about how we can amend the network in the ways that we might need to.

Gillian Martin: It is important to say that we do not have that clarity from DEFRA. I want to bottom that out with DEFRA, because, as it stands, our assessment is that the provisions in regulation 9D do not permit individual sites in the site network to be adapted in the ways that might be required to mitigate the effects of climate change. They do not allow us to modify the boundaries of sites or to remove features from site citations. Nothing that has come from DEFRA has given us any confidence that we would have the ability to do that on the basis of regulation 9D. If we had that confidence, we would have taken a different view, but we have bottomed that out and we have no idea what DEFRA is doing in relation to that. In saying that, we are in communication with DEFRA and are asking it those questions directly.

This particular power would allow us to mitigate the effects of climate change in a responsive and dynamic way, modify the boundaries of sites, remove features from site citations and do everything else that I have set out as part of our ability to protect nature, habitats and species in an agile way.

The Convener: I will bring Mark Ruskell back in—very briefly, please.

Mark Ruskell: It is a little bit concerning to hear at stage 1 that there is an on-going conversation with DEFRA about the application of the law, but we will have several months over the summer to see what situation emerges.

We took evidence from the Joint Nature Conservation Committee, which is responsible for nature conservation on a four-nations basis. Its view is that we should amend these powers "with very great caution" and that we would make wholesale changes "at our peril". There is clearly concern among agencies and those who are monitoring the state of nature in this country about any powers in this section.

I will leave it there just now, but that is food for thought.

Gillian Martin: It is not that we have not had those conversations with DEFRA. We have done an analysis of regulation 9D and we do not believe that it gives us the flexibility to respond in an agile way to situations on the ground and in the sea.

Emma Harper: Most of what I was going to ask about in my two questions on the habitats regulations and the fact that we have, unfortunately, exited the EU, which is where we are right now, has already been covered, so I will be agile and flexible in my questions.

I am seeking to understand something, and you can correct me if I am wrong, minister. Will this enabling power, the need for which arises from our EU exit, allow us to look at the legislative gap that that has created and amend or create any regulations to enhance environmental standards and meet our biodiversity and climate targets?

Gillian Martin: We acknowledge that the bill's provisions are not a replacement for the power in the European Communities Act 1972. The EIA and habitats legislation originated in EU law, which means that, as a result of our having exited the EU, we have lost that power. That has created a legislative gap that we think needs to be filled, and we do not believe that regulation 9D does that. As I said, using it would mean that we would end up with legislation that was frozen in time from the date of our EU exit.

If we required primary legislation every time that an amendment to EIA or habitats legislation was needed, however minor that change might be, that would be disproportionate and unworkable, and it is not an agile or responsive way to respond to critical and dynamically changing situations. That is why we want to be able to fill that legislative gap. We do not think that regulation 9D does that, and we think that the provision in part 2 of the bill does.

The Convener: We absolutely need to bottom that out. I understand what you are saying—that not every single little thing should, or can, be done through primary legislation. However, given that there is no parent act for habitats regulations or EIA legislation in Scotland, because those things derive from EU policies, enacting a single power such as the Government is seeking to include in the bill could open the way to a whole range of substantive changes without adequate scrutiny. That is where the concerns come from.

11:00

Gillian Martin: I would say the opposite. The very fact that the powers originated in EU law means that there is a gap now. The parent act was the European Communities Act 1972. That was a moment in time. We left the EU in 2021, or whenever it was, and we now have a fundamental gap. The purpose of part 2 of the bill is to fill that gap, which we do not believe has been addressed, in order to give us the flexibility that we used to have to respond to a changing climate and changing situations in nature and the environment.

The Convener: The crux of the question is whether EIAs and habitats regulations should be governed by primary legislation rather than regulation.

Gillian Martin: As I said, that would mean that every amendment that was needed, no matter how minor, would have to be made through primary legislation. The legislative vehicle for that might be a bill that would take a couple of years to implement. We have been talking about this bill for the past few years and only now are we putting it through the Parliament. It is about agility.

We are looking at the unworkability and disproportionality of that—

The Convener: You are focusing on the small pieces of legislation, but the concern is that the bill would allow substantive changes in regulation. The issue is not the time that it would take for tiny changes to be made; it is that the power would allow substantive changes to be made without the need for primary legislation.

Gillian Martin: The power could be used only if Scottish ministers considered that using it would be in accordance with all the purposes that I have mentioned: maintaining and advancing standards in relation to restoring, enhancing or managing the natural environment; facilitating progress towards any statutory target relating to the environment, climate or biodiversity that applies in Scotland; ensuring consistency and compatibility with other legal regimes; and taking account of technologies and changes. Those are the safeguards that are in the bill. The power could not be used in a nefarious way.

The Convener: Those safeguards are very broad.

Gillian Martin: They are very compelling, but I am willing to look at whether additional safeguards need to be put in place, because I would not want the power to be used as a loophole by any future Government. I think that those safeguards are robust.

The Convener: That takes us on to a question from Evelyn Tweed.

Evelyn Tweed: Cabinet secretary, you have probably talked to the reasoning for this already, but how does taking the power in part 2 accord with the conclusions of the Delegated Powers and Law Reform Committee's inquiry on framework legislation, which stated that

"powers allowing flexibility 'just in case' are ... inappropriate"?

Gillian Martin: Obviously, the DPLR did its inquiry. I think that I have set out some tangible examples of how the power could be used, both in the policy memorandum and in some of the examples that I have given today. Updating regulations on forestry EIAs could allow for more effective enforcement when breaches of environmental impact assessment consent conditions are discovered, which would allow greater alignment with the Forestry and Land Management (Scotland) Act 2018.

However, we cannot predict every circumstance that will require the use of the power. Having to be agile is in—I was going to say, "the very nature of nature"—the very nature of biodiversity and environmental protection. It is important that, when we develop legislation, we consider future proofing, especially in matters of the climate and nature crises, in which we have to be agile. We could be required to act urgently and decisively to address new and emerging threats. At the moment, every minor change to the EIA regime and habitats regulations can be made only through primary legislation. That does not allow us that flexibility and agility or that dynamic approach.

We are in a critical situation with climate and nature crises. We need the ability to be fleet of foot. I want to ensure that the bill has the correct balance between implementing the policy provisions and having suitable engagement and appropriate parliamentary scrutiny. As I mentioned before, in a parliamentary democracy, Governments cannot just do what they want; they have to be able to put policy through Parliament, like I am doing now.

The uses of the power will have to go through the Parliament. It will have to be scrutinised and the Parliament will say yes or no to the uses of the power. That is an important part of the jigsaw. We

are worried—I know that I am—about emerging political discourse around the denial of the nature crisis and the need for net zero. I am very alive to that, and we have seen it in other countries. However, there are safeguards in the bill and there is rationale for taking the power—it is for nature positivity.

I am willing to speak to anybody who thinks that there could be further safeguards in place, but, fundamentally, a parliamentary democracy is the gatekeeper to the use of the power.

Evelyn Tweed: It will be a safeguard for the future, to help us with the climate crisis.

Gillian Martin: It will allow us the flexibility, in the future, to adapt to changing technologies, changes in evidence and environmental impacts that we see that need a quick response. I cannot predict what those will be. That is why the power is not prescriptive—we do not know what will happen. We are talking about nature and biodiversity, and others have mentioned invasive species and the threats that they pose to particular habitats.

We know that climate change, in particular, is having a severe effect. Look at the overwintering geese—they used to overwinter in the south of Scotland and now they overwinter in Orkney and Shetland. Maybe I do not want to get in to the geese situation—

Evelyn Tweed: That is another thing.

Gillian Martin: —but it is an indicator. Look at the fish species that we do not see in the more southern Scottish waters but that we see in Ms Wishart's constituency—things that we are finding in different parts of Scotland. That is an indication that climate change is real. If we have the flexibility that part 2 of the bill gives us, we will be able to respond to it in an agile way.

Evelyn Tweed: Would a further safeguard be parliamentary scrutiny to make sure that everything was working as it should be?

Gillian Martin: The targets are important in that regard. I mentioned to Beatrice Wishart the ability under the legislation for the targets to be changed, although they do not have to be reviewed every 10 years. Whether those targets are working or not, they are subject to parliamentary scrutiny—and, of course, there is all the reporting that is associated with the biodiversity strategy and all the questions that we have in the Parliament. A robust parliamentary system will scrutinise the use of all the powers in the bill, and, as I have said, the purposes for which the powers can be used are built into the bill. I think that they are robust.

The Convener: The legislation sets out the purposes for modification or reinstatement of the EIA legislation for habitats. Does there have to be one, or all, or a combination of those purposes for you to be allowed to use the additional powers?

Gillian Martin: The bill says

"one or more of the purposes".

The Convener: So, you are able to modify EIAs on the basis of only one of those purposes.

Gillian Martin: On the basis of one or more of them, yes. However, the Parliament needs to scrutinise that and decide whether it can be done. I am open to having a conversation about whether those processes can be strengthened, but that is where we have put the safeguards for the use of that power.

Could a future Government that does not believe in climate change and that does not think that biodiversity losses are a threat to the very existence of human beings come in and be full of people who are climate change deniers? That is a possibility that we always need to take into account in a democracy. They could do anything—they could rip up any legislation that they wanted to. However, I do not believe that the Scottish Parliament will be like that and I do not believe that the Scottish Parliament is like that now.

Tim Eagle: This is an interesting conversation. I appreciate your putting on record that the aim is not to take away the protections that we have in place but to enable further movement on biodiversity or climate change. The convener made a point about the risk. You keep setting out the four areas in the bill, but if the bill had only one of those, such as net zero or climate, is there is a risk that your Government or a future Government could say, "My aims for climate override my aims for that particular habitat"? Do you see that the approach could be quite broad if, for example, we were talking about onshore or offshore wind?

Gillian Martin: That is pitting net zero against biodiversity—

Tim Eagle: That is not the intention of my question—

Gillian Martin: I heard that mentioned.

Tim Eagle: I am thinking about the risk.

Gillian Martin: First, biodiversity loss and climate change are inextricably linked and we must have protections and mitigations for them both. In every situation, decisions have to be made that take into account various pieces of evidence on environmental impact. The consent application processes are robust for offshore and onshore wind, but I think that we will be making them even more robust, particularly when there are consultations about things such as community engagement and the benefits that are associated with developments. Those consultations will become stronger as time goes on, because we

need to be able to see that developments of any sort will not damage the environment and also that they put things back into the environment. For example, developers have taken action to restore peatland, and offshore wind developers are helping us with data collection on seabirds and fish species. Much of that is voluntary at the moment, but much more will become mandatory in that space—that is the trajectory.

One of the interesting things in relation to my portfolio is the restriction on how money that is associated with developments can be used for nature restoration. As a hypothetical example, let us say that funding has come from a wind farm as a result of its impact on the seabed. I cannot necessarily use that money for other mitigations in nature that would have a material impact on sea health, so it is very restrictive. However, things are adapting and changing, and I think that they are getting stronger.

You mentioned energy, so I will talk about what is happening in that space. The Scottish ministers have the power to amend the Habitats (Scotland) Regulations 1994 within the parameters that are set out in the UK Energy Act 2003 in respect of offshore wind activities only. However, that power does not allow for amendments to the regulations in respect of emerging technologies. A number of colleagues who represent the islands are at the committee today, including those who represent the Orkney Islands. The UK legislation does not allow for any flexibility with respect to the roll-out of our nascent wind and tidal energy technologies. That is because those technologies are not yet on the horizon for the UK Government—they are being developed in Orkney and in the waters off the Highlands of Scotland. We are aiming to plug a gap and give parity to other nascent technologies so that we can have flexibility. Rather than having flexibility in respect of one power generation sector, it is agnostic in respect of the means of power generation.

As a particular example, let us take wave technology. Scotland could lead on that once it becomes commercially viable, so I would not want to stymie it at all. At the same time, the protections in the bill, which are robust, will ensure that flexibility is not given for anyone to do anything that they want in our marine environment. We have to do something to reduce our impact on climate change, which is the biggest impact to our biodiversity.

11:15

Tim Eagle: I get that you think that the protections are robust, but all the evidence that we have heard suggests that many others do not think that they are. What are your thoughts on changing that?

To go back to the question that I inadvertently asked earlier, you consulted last year on adapting and improving the habitat regulations. That consultation had two elements: one was around creating more flexibility to designate a site based on an ecosystem or habitat approach, and the other was about encouraging more proactive management. What did you learn from the consultation? You have not brought anything into the bill from that consultation, so what came out of it that led you to instead move to take this broad power?

Gillian Martin: You are right that we did consult. When it comes to tackling the biodiversity crisis, the provisions proposed in that consultation would address some immediate known issues, such as inflexibility and the wider constraints on protected areas, but they would not address some deeper-rooted concerns that we have about the legislative framework and its gaps, and we need to future proof legislation to allow us to be adaptable. We also felt that bolting additional measures on to an existing framework could have unintended consequences and would make it extremely complex to navigate.

For example, we took the decision not to progress protected areas as part of the bill but to look to at the issue in future parliamentary sessions—with the caveat that this will depend on our priorities and who is in Government—and at that point undertake a more fundamental review and then reform the legislative framework in a way that covers nature conservation, including protected areas.

A lot of what we do in the net zero and energy portfolio is about assessing the efficacy of what has been done in the past and whether it is working, which comes back to the whole thing about dynamism.

The Convener: Given everything that you have said, what evidence is there that the current environmental standards and net zero goals are incompatible? If you are changing the standards, you must think that they are. Where is the evidence of that?

Gillian Martin: I would not say that they are incompatible; I would say that we have a changing environment, and having particular protected areas would not allow development. For example, a particular site might have been designated for overwintering geese and, in economic terms, nothing can happen on it, but the protections that are associated with the site are not needed anymore because the geese no longer overwinter there and have gone elsewhere. The issue is not about incompatibility; we are adapting to the reality and taking on board the most up-to-date data and evidence. There is no fundamental incompatibility

between net zero and biodiversity, because the two go absolutely hand in hand.

The Convener: Sorry, Tim. I interrupted your questions.

Tim Eagle: Cabinet secretary, I appreciate your offer for anyone to come and talk to you at any time. I am sure that we will all work on amendments for stage 2, but, ahead of that, what are we learning? As a Government, what are you seeing in some of the ENGOs and others' responses about the powers as they are laid out in the bill?

There has been quite a lot of talk about non-regression. The Scottish Parliament information centre quite helpfully pointed out that there is something called the registration, evaluation, authorisation and restriction of chemicals regulations. I do not know if you are familiar with those changes to chemical regulations.

Gillian Martin: Yes, I am.

Tim Eagle: Rather than go down the non-regression route, REACH offers a slightly different route, which has a very clearly defined scope for the core aims and protected provisions and how the powers can be used. What is your current thinking about how you might adapt that part of the bill to better reflect the evidence that we have heard?

Gillian Martin: First, I will set out why we do not believe there should be a non-regression clause in the bill. Such a clause would limit the flexibility that is required to operate in a changing climate and it is also difficult to quantify what regression means. It is quite subjective.

Tim Eagle: You could define regression within the bill.

Gillian Martin: There is no simple answer. I know that you have heard from some stakeholders who would like to see a non-regression clause in the bill. We want to be able to adapt our legislation so that we can meet the challenges ahead of us in a dynamic way and so that we can respond effectively to the twin crises. We do not believe that non-regression is completely and utterly objective.

There are no easy answers when it comes to environmental protection. We believe that decisions should be taken on a case-by-case basis. There can be very complex and competing issues within particular areas, so, in order to make the right decision about what to do, you must look at things case by case, and a non-regression clause would limit the ability to do that.

Tim Eagle: What about the REACH example?

Gillian Martin: I am willing to explore that. If committee members do not feel that the protections that we are putting in place are robust enough we can talk about that, because this is the first stage of the bill process. However, I do not believe that a non-regression clause would be particularly workable or that it would enable us to respond to each case as it comes before us.

Tim Eagle: I have a final question, because I know that we need to move on.

I accept that point but, as I said in connection with the REACH example, which SPICe helpfully pointed out, there are other methods of doing that that do not specifically involve non-regression.

That takes me back to the question that I asked a second ago. It will be unhelpful if we do not talk about this again until all the amendments come flying in at stage 2. I presume that, over the coming weeks, you will have a discussion with your team about how you can widen the approach—I do not know whether you have had that conversation yet. I think that, based on the evidence that we have taken, that is what we are generally looking for. If you can come back to the committee with information about what you could do, that would be useful, because it would give us time to think about it.

Gillian Martin: You have referred to other regulations, such as the REACH regulations. I will take away that comparison that you have made and I am open to discussing that with members. The whole point of us sitting in front of you today is to hear your concerns and to think about how we can bottom those out, so I will absolutely take that away.

The Convener: We have heard conflicting evidence about non-regression. In our first evidence session, we heard that current legislation would prevent regression without alignment with the EU. However, we heard SEPA witnesses say in evidence last week that they thought that there should be a non-regression clause and almost all the NGOs suggested that there was a need to include some provision on non-regression. There is certainly some uncertainty about whether the bill currently deals with that and whether there is legislation that would provide safeguards. Your response today sounds as though the bill would just give us more flexibility. There is uncertainty about whether there is already legislation that deals with non-regression and whether it is not addressed in the bill in order to give flexibility. That is not clear.

Gillian Martin: There might be other avenues that we can consider in respect of safeguarding. I am absolutely open to that. My officials and I are having those conversations even as I am sitting here listening to the committee's concerns. Let me take that away.

The Convener: Okay. Thank you.

Mark Ruskell: I want to return to the subject of offshore wind. I think that the Government has said that its offshore wind ambitions are not achievable in the current system. I might have asked you a similar question when you gave evidence to the Net Zero, Energy and Transport Committee on the legislative consent memorandum for the United Kingdom Planning and Infrastructure Bill, which will give the Scottish ministers some flexibility in relation to powers under the Electricity Act 1989.

I have a similar question on the Natural Environment (Scotland) Bill. How will you use the powers under part 2 of the bill to provide the flexibility that is needed, which is particularly important for offshore wind transmission infrastructure? I think that that is the point that was made in relation to the UK bill. When you spoke about the UK bill at the NZET Committee, I think that you said that the intention would not be to change the environmental assessment regime, although I might have picked that up wrongly.

Gillian Martin: The premise of your question is that the Scottish Government cannot meet its offshore wind ambitions, but, in fact—

Mark Ruskell: I think that that has been stated by the Government, in the context of the current system.

Gillian Martin: That has kind of been bottomed out in the negotiation with the UK Government on what it proposes for the Electricity Act 1989 through the Planning and Infrastructure Bill. However, that does not account for other developments outwith offshore wind, which include the development of the transmission infrastructure that is associated with offshore wind. There is not much point in having offshore wind if you do not have the means to get the energy from it into the grid.

We have identified that there has been a gap there, but that is not the top-line reason for the powers in part 2 being in the bill; the top-line reason is to enable us to be responsive to a changing climate. With those two pieces of legislation, the UK Government has given us the flexibility in relation to offshore wind developments, but there is still a gap in relation to ancillary developments that would get that energy into the grid. There are technologies that are not to do with offshore wind that are nascent and could develop. Again, we are interested in a future-proofing element.

I want to emphasise the point that we have two exciting but nascent technologies in Scotland—wave and tidal—that are not accounted for in any of the UK legislation that we have mentioned.

Mark Ruskell: Compared with environmental outcome reports, which are embedded in the UK Planning and Infrastructure Bill, does our current system of environmental assessment work when it comes to the nascent technologies of marine and tidal? Is there a need to fix anything in that space?

Gillian Martin: Part 2 of the bill will give us flexibility around that and will bring it into line. It is agnostic about the technologies.

Mark Ruskell: Okay. You are saying that the issue that the Government said existed in relation to offshore wind ambitions not being achievable in the current system has, by and large, been resolved by the Energy Act 2023 and the LCM for the UK bill.

Gillian Martin: Yes—absolutely.

Mark Ruskell: That is fine. Thank you.

Gillian Martin: I am sorry if it took me a wee while to get there.

Mark Ruskell: No—that is fine. Between the two committees, I was just getting it clear in my head that that has been resolved.

Emma Harper: I have section 3(c) of the Natural Environment (Scotland) Bill in front of me, which concerns the purpose of ensuring consistency with other regimes. It has been suggested to us that that would open up a "race to the bottom" with other regimes. Stakeholders have expressed concerns about that purpose, but my understanding is that it relates to alignment with environmental outcome reports in England, for example.

Could the power in part 2 be used to make substantial revisions to the Scottish EIA regime to align it with environmental outcome reports? I am asking about the purpose of ensuring consistency and compatibility.

11:30

Gillian Martin: You have sort of answered your own question in that the most likely circumstance in which the Scottish Government would need to consider secondary legislation would be to align with a UK environmental outcome report, and that would probably happen in relation to the marine environment. The UK Government has legislative competence in the Scottish offshore region, but the Scottish ministers have legislative competence in the Scottish inshore region, so there could be a need for alignment there.

As you said, it is important—especially for renewable energy developments—that there is consistency. There has to be a degree of interoperability. We do not want to be bound by a false boundary because of who has the power.

If two regimes have fundamentally different legal requirements, there might not be an option but to

pursue legislative change. Again, that part of the bill is about future proofing, given that we do not know what developments will be on the table in the future. We want to be able to be responsive and to work with the UK Government to align on issues where a lack of alignment might be a barrier to any deployment, which we would not want to be the case.

Emma Harper: The area of offshore planning and energy infrastructure is reserved to Westminster. Is that part of—

Gillian Martin: We do the consents aspect of that, but the regulation associated with it is reserved to the UK.

The Convener: The implication of that would be that statutory biodiversity targets for offshore regions could not be set by the Scottish Government.

Gillian Martin: It depends on which waters we are talking about.

The Convener: Offshore waters.

Gillian Martin: We have responsibilities for inshore waters.

The Convener: But not offshore waters.

Gillian Martin: Yes, but, again, the issue is to do with the interoperability of the two regimes. At the moment, we are in a bit of a sweet spot with regard to alignment, because of the UK Government's ambitions in that area. In addition, both Parliaments have net zero targets—ours is 2045 and the UK's is 2050—so there has to be interoperability when it comes to how we achieve those.

The Convener: On the marine environment side, it is obvious that Scotland has different goals and targets from the rest of the UK in relation to good environmental status. At the moment, that is incredibly important up here. How will all those things be brought together? You have said how the system can work for the inshore regions, but how will that come together with the system for the offshore regions? That is important. Only last week, or the week before, we were considering salmon farming in the offshore environment, where there are offshore wind developments and so on. How do you foresee those things coming together?

Gillian Martin: Are you suggesting that Scotland should have responsibility for offshore as well as inshore waters?

The Convener: I asked my question because, at the moment, there is no route for you to set biodiversity targets for the offshore environment—you can do that only for inshore waters.

Gillian Martin: I am not quite sure how to answer that. The fact remains that the Scottish Government has responsibility for inshore areas and the UK Government has responsibility for offshore areas.

That exemplifies why it is important that the UK Government, as well as the Scottish Government, takes into account the net zero goals and the biodiversity goals. Interoperability between the four nations is extremely important, because biodiversity does not have boundaries—species do not have boundaries. We all have to work together to—

The Convener: That is exactly the point.

Gillian Martin: The UK marine strategy brings it all together.

The Convener: You are responsible for good environmental status in the marine environment.

Gillian Martin: Given your constitutional allegiances, I am not sure that you want to go down that path. We are getting further into the area of asking whether the Scottish Government, which wants to have responsibility for Scotland as a whole, should have powers in relation to the entire marine environment, and you know what my answer would be.

The Convener: It is quite clear that the Scottish Government has responsibilities in relation to biodiversity targets and good environmental status, but the two Governments have separate goals in relation to the marine environment. How can all of that be pulled together so that you can discharge your responsibilities when it comes to biodiversity targets offshore?

Gillian Martin: That can be done by all the individual component parts of the UK working in concert with one another and having shared ambition. That is my answer to that. When we do not have shared ambition, that jeopardises the devolved Governments reaching their targets. For example, one of the biggest inhibitors to us meeting our net zero targets is the fact that the electricity that Scotland generates is too expensive for our citizens to use, so they cannot decarbonise. That is simply the nature of the situation that we are in as part of the UK.

However, we have regular interministerial meetings on all of that. I have regular meetings with my counterparts in Northern Ireland, Wales and the UK to discuss all those issues. If we take net zero as an example, the fundamental point is that the UK will not be able to meet its net zero target of 2050 without Scotland meeting its net zero target of 2045, and vice versa. Therefore, the four Governments must work in concert with one another.

The Convener: I suppose that I am looking at the practicalities of the situation. Will the UK targets that are set under the Environment Act 2021 apply to the offshore waters? We know about the inshore waters—it is your targets that apply there. Will the targets for offshore waters be set under the Environment Act 2021?

Gillian Martin: Good environmental status is a UK-wide endeavour, if that answers your question.

The Convener: I am asking whether the biodiversity targets for offshore waters will be set under the UK Environment Act 2021.

Joanne Napier (Scottish Government): No. We do not have legislative competence for the offshore area, so the targets can be set only for the inshore area, where we have legislative competence.

The Convener: Okay—that answers that question.

Gillian Martin: I am glad that we got there in the end.

Mark Ruskell: We have largely covered the difference between the EIA and the environmental outcome report regimes. The EOR regime is not up and running yet, but if there was a need for alignment there, would the Government consider issuing guidance before using the powers under part 2?

Gillian Martin: Yes. In my response to Emma Harper, I explained why such alignment could be very important. Obviously, we would want there to be alignment so that we do not have a gap. Guidance is, of course, not legally binding, but it is sensible to provide it if there is a gap. I will take advice from my official, who looks as though she might have something to add.

Joanne Napier: We would have to explore further whether that could be addressed through guidance. If it were possible, we would always seek to address the issue through guidance rather than legislation.

The Convener: Mercedes Villalba is next.

Mercedes Villalba: I do not have any further questions.

The Convener: In that case, I will have the pleasure of asking the last question, which is about flexibility and accountability.

You wrote to us to confirm that the Scottish ministers would lay any part 2 regulations under the affirmative procedure when the content of the regulations would make substantial change. That was the direction of my earlier question—I was asking about the difference between substantial and insignificant changes. Substantial changes require greater levels of scrutiny.

What criteria will you use to inform decisions about what is substantial and what is not? Why are those criteria not set out in the bill to give us the comfort of knowing that, as you said, Parliament will get the opportunity to fully scrutinise any substantial changes?

Gillian Martin: This is where I need some legal advice. If it is okay, I will hand over to Stewart Cunningham, who has the detail on that.

Stewart Cunningham: The parliamentary procedure provisions in the bill have two components. Section 2(6) sets out which regulations must use the affirmative procedure. Ministers have a choice about whether any other regulations would use the affirmative or the negative procedure. The established approach is that more substantial policy changes would be made through the affirmative procedure and more technical or procedural changes would be made through the negative procedure. That is the practice that was applied to the section 2(2) power in the European Communities Act 1972.

There are no direct criteria in the bill, so that is a matter for ministers' discretion.

Gillian Martin: We can look into whether more clarity is needed.

The Convener: It would certainly give a level of comfort if the criteria that you will use—you have said how you will decide how the secondary legislation regulations will be taken through—were included in the bill. I would welcome you considering including those criteria in the bill.

Gillian Martin: Let me take that away.

The Convener: Thank you very much. That completes our questioning. I thank the cabinet secretary and her officials for attending.

I suspend the meeting for 10 minutes to allow for a changeover of witnesses and a short comfort break.

11:40

Meeting suspended.

11:48

On resuming—

The Convener: Welcome back. We move on to our third panel on the Natural Environment (Scotland) Bill. We will take evidence on part 4 of the bill, and for this discussion I welcome Jim Fairlie, the Minister for Agriculture and Connectivity. I welcome back Leia Fitzgerald, head of the nature division bill unit at the Scottish Government, and we also have Sam Turner, team leader of the wildlife management team; Brodie Wilson, policy manager of the wildlife

management team; and Hazel Reilly, solicitor, all from the Scottish Government.

We have up to 90 minutes for this evidence session. I remind everyone to try to keep questions and responses as succinct as possible, to allow us to get through all our questions.

I will kick off with a nice straightforward question, minister—you will be pleased to hear that. Section 10 of the bill updates the aims and purposes of deer management to include safeguarding the "public interest", but that term is not defined in the bill. In an online deer practitioner meeting that was held two weeks ago, there were considerable differences of opinion on what that public interest might be. Do you intend to define the term "public interest" in secondary legislation or the code of practice?

The Minister for Agriculture and Connectivity (Jim Fairlie): I do not think that we will be doing that in secondary legislation. The term "public interest" is widely used in legislation and, particularly in the context of the bill that we are looking at, the public interest might be one thing in a Highlands setting and completely different in a lowland setting. We will not be defining public interest in secondary legislation. We do not think that that is needed, and it could have unintended consequences, because you could define public interest and it could then turn out that you need a different definition for something else.

I suggest that, at this stage, we are looking at a general understanding of what the public interest is, and we should trust NatureScot, when it is having those conversations with people who are relevant to the public-interest test, to find common ground.

The Convener: On that basis, what is your definition of public interest and what the public-interest test would be? Whether it is in the south of Scotland or in the Highlands, what is your understanding of the term "public interest"?

Jim Fairlie: The public interest will have to be set out in the code of practice in the individual circumstances.

The Convener: But you just said that it would not be set out.

Jim Fairlie: My personal definition of public interest is not the relevant point. The relevant point is whether NatureScot has the public interest at heart when it is making those decisions. Nature restoration, the interests of the community and the interests of the people doing deer management would all have to be taken into account during any public-interest test.

The Convener: I am a bit confused. You said that a definition would not appear in the code of practice because that might lead to uncertainty, but then you went on to say that NatureScot would set it out in the code of practice. What exactly is the position—and, again, what is your definition of public interest? Given that you are the minister, it is not really about your personal view; it is about the Government's view on what that public interest is.

Jim Fairlie: Public interest encompasses collective needs, values and interests of society as a whole rather than those of individuals or specific groups. The expression is to be understood and applied contextually. What constitutes public interest in different situations may be different. It may also evolve over time. For example, at the moment, a significant interest for the public at large is the concern about biodiversity loss and climate change. However, other public policy considerations might be relevant to any given decision, which requires NatureScot to take a very holistic approach to its decision making in relation to deer.

The Convener: Why would that not be in a code of practice or set out in secondary legislation?

Jim Fairlie: I do not understand. We have already said that it will be set out in the code of practice.

Leia Fitzgerald: The explanatory notes for the bill provide further expansion on what public interest is. The notes say that interpretation and proportionality of environmental duties differ across different rural land holding contexts, including estates and crofts and so on, so there is a bit of further context there.

The Convener: Just to be clear, that context is in the explanatory notes and the definition will be in the code of practice.

Jim Fairlie: Yes. I understand that there is a desire for clarity on the meaning of the term "public interest" in that context. The right place to do that is the code of practice and not in secondary legislation.

The Convener: Okay. Thank you.

Evelyn Tweed: Good morning. How will the Scottish Government ensure that the public interest and environmental duties are interpreted and applied proportionally across areas such as, as you have said, traditional Highland estates, lowland farmland or even urban areas?

Jim Fairlie: The public interest will be proportionate to the area, as I said in my previous answer. It would be entirely different in west Perthshire from what it would be in lowland Scotland or urban Glasgow. It is not about the proportionality of the approach from Government or the legislation; it is about how NatureScot then defines that with the people who it is bringing

those plans into place with. Does that make sense?

Evelyn Tweed: Yes. How will it be determined for each area?

Jim Fairlie: The public interest will be determined by the consultation process that NatureScot goes through with the people who are involved with a deer management plan or whatever it is that they are doing. Does that make sense?

Evelyn Tweed: Okay. That is me, convener.

The Convener: We heard concerns, especially in the south of Scotland, among the lowland deer groups, that there was a lack of resources to fully meet public interest expectations. What is your response to that?

Jim Fairlie: A lack of resource to meet public expectations?

The Convener: The deer groups were concerned that, if, as you have suggested, the code of practice sets out what the public interest is, based on the public's expectations, there would be a lack of resources to deliver that public interest.

Jim Fairlie: When you say the deer groups, are you talking about the deer management groups?

The Convener: Yes. I am talking about deer management groups—landowners and so on.

Jim Fairlie: I do not see that being a concern. There is definitely a difference between what lowland deer management will do and what upland and hill deer management will do, because there are deer management groups in those areas. Is the concern that deer management groups are being targeted as opposed to what is happening on low ground? We accept that there is a difference between the two areas.

The Convener: I think that there is a concern that some rural communities, particularly in lowland Scotland, would be overlooked and that public expectations would favour centralised or conservation-led priorities rather than local livelihoods.

Jim Fairlie: Do you mean that the deer management groups think that their concerns about how they make a living would be overlooked in favour of a restoration order? I apologise if I am being dim here. I am just not quite getting your point.

The Convener: The code of practice will set out what the public interest is, and you are saying that there will not be one overall definition of public interest. The issue is that, in the south, deer practitioners are concerned that their views on the public interest will be overshadowed by what conservation groups and others who have a different perception of what public interest is say—they talked about central belt bias.

Jim Fairlie: That makes sense to me now, so thank you for the clarification.

That is the whole point of the public interest test—when we talk about the public, we include those deer managers. They are part of the community in which they are living. Therefore, cognisance would have to be taken of all of that during any public interest test. Whether it is low or high ground, all those considerations will have to come into play.

The Convener: Okay. Thank you.

Rhoda Grant: We heard mixed views on whether NatureScot should have a formal role on advisory panels, given that it is also the regulator. What are your reasons for proposing that change, and what safeguards will be in place to prevent any potential conflicts of interest?

Jim Fairlie: I do not think that there will be any conflict of interest. The rationale for having a NatureScot person on a panel is that, if NatureScot has a level of expertise in a particular area, it can then be part of that panel. I am not sure why there is a concern around that, and I am happy to hear the committee's views on that. The panels are there to do what the panels are there to do, and if NatureScot can add to a panel's ability to do its job, I am not sure why there would be a fear of a conflict of interest.

Rhoda Grant: As part of the panel of advisers, NatureScot would obviously be giving advice, but anybody else on that panel would know that, at the end of the day, it is the regulator. That would create a bit of an imbalance on the panels, because the gamekeeper, who will be making sure that everybody else complies with whatever comes out of that panel's advice, will also be sitting on the panel. It just seems that that would set an imbalance for people.

Jim Fairlie: NatureScot's inclusion was part of the deer working group's advice—that is who recommended it. I disagree that there would be a conflict of interest. This line of questioning makes it feel as though the purpose of the bill is to come in with a big stick—it is not; it is about our ability to work collaboratively.

There is no way that the Government, NatureScot or any other individual body will immediately be able to tackle the challenges of deer management on its own. It will have to be collaborative. There can be someone from NatureScot with particular expertise sitting on a panel, but they will not necessarily have to sit on every panel. In fact, I am not even sure how many panels we have at the moment. I think that one

was set out in 2018 for a deer management group in lowland Scotland.

I do not see having expertise on a panel as a conflict of interest; I see it as enabling us to get the best decisions that we can on how to manage deer.

12:00

Rhoda Grant: I guess that the conflict lies in the fact that an advisory panel gives advice and it is up to Government whether it takes that advice. If the advice was different from the decision that was made, NatureScot would still have to police compliance with that, even though the panel obviously did not agree with the decision or want it to be implemented.

Jim Fairlie: NatureScot is a public body. It therefore has a duty, and it must act reasonably and with impartiality when carrying out all its duties. Furthermore, deer panels have to be approved by the Scottish ministers. If the panels must be approved by a Scottish minister, if NatureScot has to comply with the duties upon it, and on the basis that everything that we are trying to do under the proposed legislation is to make things better—as everybody agrees we want to do—I am not convinced that there is a concern. I was going to say "legitimate concern", but it will be legitimate to people at the time. I hope that we are giving some comfort on the basis that the proposal is not meant to create an issue; it allows us to get the best advice possible on deer control at every opportunity.

The Convener: I would like to get on the record your understanding of the role of advisory panels.

Jim Fairlie: The advisory panels are there to give advice to local groups on how they will manage their deer.

The Convener: Okay. If you do not mind my coming in here, Rhoda, I will continue. Is there not a conflict of interest if NatureScot—which ultimately will be the decision maker—has a role on the advisory panels?

Jim Fairlie: No. There will be a representative from NatureScot, but the panel will consist of other people, too.

Let us go back to the principle of what the proposal is about. The panel's appointment must be cleared by a Government minister. The panel's role is to have a conversation about how deer will be managed in any particular area. Having the expertise of somebody who is enveloped in that work on a daily, weekly or monthly basis can only be a good thing, because it allows the broadest area of expertise to be available when advice is given.

The Convener: What role does the Government play in setting the agenda and scope of the advisory panels?

Brodie Wilson (Scottish Government): Section 4 of the Deer (Scotland) Act 1996 sets out that panels can be appointed

"Subject to the approval of the Secretary of State".

I can think of two advisory panels off the top of my head: one in 2018, on lowland deer, and one previous to that, relating to the transition from the Deer Commission for Scotland to SNH, which is now NatureScot.

Such panels are not used very frequently, but we can see that there might be opportunities for them to be used more in the future, when circumstances change. Ministers would have to agree the appointment of a panel, its purposes and so on, so there is an overarching role for Government there.

Rhoda Grant: Having a separation of powers is a well-known way of working—the person in charge of policing something does not make the regulation. If someone does not agree with what is being proposed in discussions that have been carried out in an open forum, how can people trust them to regulate the implementation of that in a transparent way? You say that the NatureScot members on the panels are public officials and they are bound not to work in a detrimental way, but they are still human beings. That is why we tend to have that separation of powers, whereas it feels like there is a real conflict in the proposal that is before us. It is fine if everything is working and everyone is in agreement, but you would not need those panels if everyone was in full agreement. How do you prevent the conflict?

Jim Fairlie: You have used the one word that I think is really important in this, which is "trust". We all have to be able to trust one another in what we are trying to achieve here. I go back to the point that I made to the convener, which is that NatureScot is a public body and it must act reasonably and with impartiality in carrying out its duties. The deer panels must also be approved by Scottish ministers.

It is not compulsory for NatureScot to have someone on a panel. It will have, however, if that person has expertise that is specific to what the panel is addressing.

Sam Turner (Scottish Government): It is worth clarifying that a panel does not need to be about regulation. A panel is there to provide advice to ministers. In 2008-09, when the Deer Commission was merged with SNH, which is now NatureScot, a panel was set up to look at the transition process. A panel was also set up to advise on lowland deer management in Scotland.

Panels are not set up just to inform regulatory action; they are set up to advise on how we manage deer across Scotland, and NatureScot being part of that would be useful.

Rhoda Grant: This is off the top of my head—I know that we do not have a great deal of time, convener. Let us say that the advisory panel says that we need to get deer numbers down to five per hectare and NatureScot says that 10 per hectare would be fine. NatureScot would have to police getting that number down to five. What confidence could people have that NatureScot would police that when everyone knows that it thinks that 10 is the right number?

Jim Fairlie: It is an advisory panel. NatureScot will give advice.

Rhoda Grant: Yes, but if its advice is different from the action that is taken, how can you then say that it is an impartial enforcer?

Jim Fairlie: I am genuinely not seeing the conflict here. The panel is advisory, NatureScot has to act reasonably and impartially in all its duties, and the panel must be approved by Scottish ministers. I do not see the issue being as dangerous to impartiality as other people think that it is. I just have a different opinion. I am sorry.

Brodie Wilson: There are lots of things that NatureScot will do because it is a public body. That is an expectation of it as a public body. NatureScot's opinion might differ from those of stakeholders on some things, but if it is Government policy, that is what NatureScot will do. That is the expectation.

The panel is an advisory panel. Whether ministers agree with the advice or not, if it becomes Government policy or it is an ask of NatureScot, it is NatureScot's role as a public body to follow it. It comes back to the point about trust in public bodies.

The Convener: Why the change? What cannot be achieved on the advisory panels with NatureScot as an observer?

Jim Fairlie: NatureScot was an observer—it observed and did not contribute. It was not part of the panel and it did not take part in the discussions. It was not in the body of the kirk as part of the panel.

The Convener: What, then, can NatureScot achieve as a panel member?

Jim Fairlie: It can speak, give advice and offer expertise.

Mark Ruskell: I was wondering whether there is precedent for having an environmental regulator as an adviser when it ultimately holds power over regulation. Is that something that NatureScot is already doing?

Ms Wilson described NatureScot as having a wider advisory role, but this is quite specific. It is about advising in a particular area on deer management plans, while also having a regulatory function. Is there precedent for how NatureScot and other environmental regulators have managed those two responsibilities? How have they dealt with the perception that there might be a conflict of interest?

Jim Fairlie: I cannot argue that off the top of my head, but if we cannot find the information just now, we will come back to the committee and give you any that we have on whether there is precedent for that.

Brodie Wilson: There are certainly circumstances in which NatureScot establishes groups—for example, to decide policy—and it both sits on the group and plays a regulatory role. That might be slightly different from what we are talking about with regard to panels, but it is not totally dissimilar. There might be other specific examples, but we would need to come back to you on that—it would be in the context of invasive species and that kind of thing.

Emma Harper: I would like a quick clarification, minister. I cannot see how it would be beneficial to exclude any experts from the ability to manage what everybody recognises is a problem with different species of deer, whether the area is urban, periurban, rural, highland or lowland. We have challenges that we need to meet, so I cannot see that excluding anybody would be beneficial, and I propose that we do not exclude NatureScot.

Jim Fairlie: The purpose behind its inclusion is to allow an extensive range of voices to be part of the conversation to try to find the best solutions. That is entirely what it is about.

The Convener: The difference is that NatureScot would be moving from its current position as an observer to having a formal role on advisory panels. That is where the concerns were, but you have addressed that.

I call Tim Eagle.

Tim Eagle: Good morning, minister. I have a quick question on reviews of compliance with the code of practice. As I understand it, the bill sets out that the Scottish Government can request a review at any point. In what circumstances do you foresee that happening?

Jim Fairlie: There could be any number of circumstances. Currently, there has to be a three-year review; the bill proposes that it should be a 10-year review. Things could happen or change, and circumstances could require more immediate action to be taken, and that is why the provision was put in the bill.

Tim Eagle: Is there any particular circumstance, though? Does anything spring to mind?

Brodie Wilson: We might see a report on something that we would want to consider, such as a change in climate. There are all sorts of circumstances in which Government might want to act.

Jim Fairlie: It is purely to give flexibility, rather than saying, "Right—we can review that in 10 years' time, so even if something happens two years from now, we cannae really review it until then."

Tim Eagle: So, it is purely about that flexibility.

Jim Fairlie: It is purely to give that flexibility, yes.

Mark Ruskell: Section 13 adds "nature restoration" as a ground for intervention in deer management. However, control schemes under the section 8 powers in the 1996 act have not been used until relatively recently. Do you envisage the position changing under the bill, with more use of section 8 powers?

Jim Fairlie: There has been only one section 8 scheme, which was signed off very recently. There may be some increase in the number of interventions, but I do not envisage them growing to the extent of requiring the use of section 8 powers.

One of the beauties of the current system is the staged process. There has to be consultation, conversation and persuasion, which is far more important than getting to a point at which we look at forcing somebody to do anything. NatureScot does that anyway. I will try to find the exact numbers that we have—

Mark Ruskell: Can I reflect on that? In theory, the current system looks like a good one, but clearly it has not worked at all, and that is why we are where we are, with the nature crisis and the need to tackle deer management seriously. We are talking about an improvement to an existing system. Why do you think that the section 8 powers would not be used so much in the future?

Jim Fairlie: I would not say that the system has not worked at the moment—it is just that deer numbers are where they are, and we are now going to take action to try to get those numbers down.

There is a huge amount of good will in the sector. I have had a number of meetings with land managers and deer managers, and everybody is agreed that we want to do this and get the numbers down. There are varying reasons as to why the numbers may have gone up, but there is a concerted effort to get them down. Everybody is actually on board with that—that is one of the things that I have taken from my engagement with stakeholders on the bill. They may be unhappy with individual bits of the bill, but the overall consensus is that we want to do this, and we want to do it collectively. As I said right at the start, we are not going to do this on our own. I do not see there being any greater use of the section 8 powers, because I genuinely see a concerted effort from everybody who is involved.

On the occasions when NatureScot has to get involved, that can usually be done through deer management groups and consultation with the people who are involved. I very much hope that that will continue, because there is a collective effort to achieve our aims.

12:15

Mark Ruskell: You will avoid the need to use section 8 because section 7 and section 6 will work more effectively. Is that right?

Jim Fairlie: That would be my hope, yes, but we would have the ability to go further if we needed to.

Mark Ruskell: It has been put to us that section 8 powers were not used in the past because using them would require a high burden of proof, which could be challenged through judicial review. For many years, there has been the suspicion that there has been an inability to issue a robust section 8 notice in a way that would not be legally challenged on the basis of the evidence. Do you think that the bill changes that, particularly with the new grounds for nature restoration? Does that provide more legal certainty now?

Jim Fairlie: The bill gives certainty to the industry and the Government that we are working towards the same end and the same aims. Notwithstanding the point that I just made that there will be conflicts around different bits of the bill, overall, everybody is behind the aims and objectives, and everybody understands what we are trying to do. I therefore hope that we can resolve the vast majority of issues that come up through negotiation and consultation with the people who are on the ground, rather than by any kind of enforcement.

Mark Ruskell: Does Ms Wilson want to come in?

Brodie Wilson: We have recognised for a while that the 1996 act does a lot around deer damage and that there has been a need to look at the wider environmental circumstances. During the passage of the Wildlife and Natural Environment (Scotland) Act 2011, change was attempted and something was inserted into the 1996 act. What we are doing here, however, improves on that. We have learned from it, and there are new powers to

deal with the current context and what we need to be able to do to tackle the climate emergency.

The Convener: Minister, your approach is very noble in that you hope that most of the challenges will be dealt with by deer groups and so on. However, that is out of kilter with the financial memorandum, which suggests that there will be one or two deer control orders per year, at significant cost to the taxpayer. Why is your financial memorandum not quite as positive as you are about the outcomes that you suggest we will achieve?

Jim Fairlie: The financial memorandum is what could happen, not what will happen. From my point of view, it shows the worst-case scenario that we might end up with.

The Convener: Surely the financial memorandum should try to reflect what is going to happen as well as what is possible, rather than the worst possible scenario.

Jim Fairlie: Yes, but if we could see into the future, we would pick six numbers and we would all be millionaires. The point that I am making is that the financial memorandum shows the potential worst-case scenario. We cannot say with any certainty what is actually going to happen. If I am taking what you called a very noble approach, I will take that as a compliment, so thank you very much. However, my approach is a result of the conversations that I have had with the sector. Everybody has a genuine desire to make this work. That is how I have approached the issue right from the start, and it is how I will continue to approach it.

We will try to get through the knotty bits, which we understand are there, and we will try to find resolutions to people's issues. However, by and large, what the financial memorandum states is based on the potential worst-case scenario.

The Convener: We asked NatureScot to come back and show us its workings and how its conclusions were arrived at. It will be helpful to have that.

Tim Eagle has a question.

Tim Eagle: Minister, you are right to say that there is a fair bit of good will out there at the moment. However—and this follows on from Mark Ruskell's question—we have heard in evidence that there is a bit of uncertainty about the vagueness of the phrase "nature restoration". How do you intend the guidance to give clarity about what that means and in what circumstances it might be used?

Jim Fairlie: We all know what damage is and what restoration is. We can see things being restored and improvements starting to be made with regard to what people are looking to achieve with any individual parcel of land.

Tim Eagle: Can you give me a case study? What is a practical example on the ground of what might happen on an estate or a lowland setting?

Jim Fairlie: NatureScot has already written to you with some examples. I will give you some, too, but you will have to bear with me, as I have a lot in front of me.

There are specific scenarios in the central belt, where we have a peri-urban setting. The aim is to seek assurance that longer-term deer management measures are in place to help deliver 30 by 30 nature networks and landscape-scale restoration projects, examples of which include the seven lochs wetland park and the climate forest project areas. The central belt has a mix of agriculture and small woodlands on the edge of a wider open upland space, with a dispersed population in many small settlements that are close to major conurbations. That would include major trunk roads and the Campsie fells, for example; we also have rainforests.

You will get the examples in the letter. I could sit here and read it all out to you, but that would be a waste of your time and mine. You have a pretty well-documented letter from NatureScot that gives you a lot of the examples that you are looking for.

Tim Eagle: Is the intention to feed that into the code of practice?

Jim Fairlie: The code of practice will be developed and a lot of this will be fed into it. It goes back to the whole point of this, which is for us all to work together to find positive outcomes. All of that will feed into the code of practice.

Tim Eagle: Just out of interest, I wonder whether you have given any thought to asking your officials to work on the code of practice now, so that we can have a draft before stage 3 and scrutinise it before the end of the bill proceedings. It is quite an important document.

Jim Fairlie: You are right that the code of practice is important, but it would not be feasible for us to do that work on the code of practice before we get to stage 3. We can work on stuff at the moment, but I am afraid that a final code of practice will have to be delivered later.

The Convener: It was suggested by stakeholders that a draft code of practice would be helpful in setting the direction of travel and allowing deer practitioners at least to anticipate what the code will be. Would you consider publishing a draft code of practice prior to stage 3?

Jim Fairlie: Again, no, I do not think that that would be appropriate at this stage. The code of practice will be worked out with stakeholders and

the people it will be relevant to, and then we will bring it forward. We will not have the time to do it before we get to stage 3, but, as I have stated from the outset, it will absolutely be done in consultation with stakeholders, so that we get it right.

The Convener: Given that we will be potentially passing the bill at stage 3, it would be helpful if the Parliament had a chance to scrutinise the grounds on which some of the interventions will be made, or have some understanding of what the code of practice might look like. If you desired to be helpful, minister, the code could be delivered in a draft form.

Jim Fairlie: Whatever develops with the follow-on work, there is already a code of practice that you can look at, and it represents the barometer for what we are trying to do. The new code of practice might well add stuff or take it away, but all of that will be done in consultation with the stakeholders.

Beatrice Wishart: Much of the operational detail of how NatureScot will intervene is being left to the code of practice, so why has the Scottish Government opted for that approach instead of outlining the conditions in the bill?

Jim Fairlie: If you put those things in primary legislation, they become primary legislation. We want them to be in the code of practice so that we have flexibility, because things might change, as we said earlier.

Putting the conditions into the bill will mean that they are put into primary legislation. I am dealing in the same way with another bill right now. If you set something out in legislation and then people want to change stuff later on because circumstances have changed, that is a whole different problem to deal with. Setting the conditions out in the code of practice gives us the flexibility to get it right.

Brodie Wilson: The 1996 act already sets out quite a detailed instruction to NatureScot on the things that it must do when it comes to working with the landowner or occupier and the steps that it must take when going from the voluntary to the compulsory approach. Although the code of practice will set out in more detail the circumstances in which NatureScot might become involved, the actual process for the engagement work that it must do is already set out in legislation.

The Convener: Tim Eagle, do you have a supplementary question?

Tim Eagle: My understanding of the bill is that NatureScot must "have regard to" the code of practice. There have been some queries about whether that is a fair or strong enough term. What are your thoughts on that?

Jim Fairlie: I think that it is.

Tim Eagle: You talked earlier about good will—and I will come back to that, because I think that you do have good will—but there is a risk that things such as nature restoration or vague terms such as "have regard to" risk undermining it.

Jim Fairlie: I do not think so. Brodie Wilson has just pointed out to me something that I should probably have read out. A statutory requirement to "have regard" to something is understood as being a requirement to consider it. If there is a requirement for NatureScot to consider the code of practice, that goes back to what we said earlier about its duties as a public body and what it must bear in mind in any future consideration. If you look at all that in the round, that should give confidence that people will have a good enough working relationship with NatureScot to be able to develop the practices that we want to be delivered.

Tim Eagle: If stakeholders do not feel that that is the case, why would you not consider slightly strengthening that wording in the bill?

Jim Fairlie: We will just have to work on making that relationship work better. Right now, all the evidence that I am seeing and all the engagement that I have had show that, by and large, there is a good working relationship between the deer management groups and NatureScot. There will, of course, be conflict—we cannot avoid having some disputes about certain areas—but, by and large, there is a general degree of trust that I hope that we will continue to build on.

Sam Turner: On that final point, although the code of practice will have more flexibility than the legislation, there is also a degree of risk in strengthening the wording from "have regard" to something else, because the circumstances in the code of practice will not apply to all areas of land. There will be some areas where certain parts of the code of practice apply and other areas where they will not. Strengthening the wording to, say, "must comply" would mean losing flexibility. We have to trust that NatureScot will take into account what is relevant to each landowner and land area.

Tim Eagle: I fully accept that point, but, although that gives flexibility to Government and public bodies to respond, the problem for practitioners on the ground is that they will then be uncertain about what could happen in any given situation. There is no way you can ever set everything out in a bill, but that takes us back to the point about relationships. Stakeholders and businesses must be clear about what NatureScot's intentions might be. Does that make sense?

Sam Turner: That makes sense, but, to flip it, the wording also gives landowners and land managers some flexibility. If the bill said that they "must" do something that they thought did not apply to their piece of land, or if they thought that their circumstances were different, they would struggle with legislation that said they had to do something. However, the use of "have regard" means that they can have a conversation with NatureScot and come to a reasonable decision.

Tim Eagle: It is important to place on record that you foresee that dialogue and that relationship happening. You have already said as much, but I just want to the point to be clarified.

Jim Fairlie: We are seeing them already, and they are happening all over the country. Those relationships are good and workable, and we hope that that approach will continue.

The Convener: I guess that the concern is that that would allow NatureScot to pick and choose when to abide by the regulations and when to enforce them. That is the issue with flexibility: there is no certainty for land managers or deer practitioners that NatureScot will abide by the regulations.

Jim Fairlie: NatureScot would certainly have to abide by the law. If we are talking about the code of practice, that code is there to get people to work collectively and collaboratively.

The Convener: You are talking about flexibility, The fact is that having "regard to" the code suggests that, in some circumstances, NatureScot might not have to follow the regulations set out in that code.

Brodie Wilson: There are two things to say in that respect. First, the wording of the 1996 act is slightly different but it already requires NatureScot to have due regard to the code. What we are talking about here is a concern about NatureScot not complying with the code of practice and perhaps requiring something of land managers.

The Convener: Absolutely.

12:30

Brodie Wilson: If that were the case, in order to compel land managers to do anything, the process would need to be signed off by ministers and there would be a period during which people could object to that requirement. Although it is right to say that we must put trust in NatureScot as the nature agency, if land managers were concerned about that, they could make a case to ministers and we would review it. If, at that point, we agreed with the requirement and they still felt that it was inappropriate, there could be an appeal to the Scottish Land Court. Protections are in place to deal with that circumstance.

The Convener: Thank you. I appreciate that.

Rhoda Grant, do you have a supplementary question?

Rhoda Grant: Farmers are taking on more environmental responsibilities as part of their normal work. One of their complaints about deer management is that they can manage deer if they find them on their land, but, as often as not, the deer have gone by the time the farmers see the damage. Is it possible to put something in the bill—or is there something already in the bill—that would enable farmers to manage deer that were having an impact elsewhere on their land? What powers would they have to instigate deer management plans to stop that impact on their land?

Jim Fairlie: There is already provision for the tenants that you are talking about to control deer and stop them marauding, and so on. Section 26 of the 1996 act gives occupiers the right to take deer when they might not otherwise have the right to do so, including in "enclosed woodland" and on some agricultural land where they are causing damage. The deer working group recommended that section 26 be extended to provide that occupiers can take action to prevent damage by wild deer across

"any type of land and cover public interests of a social, economic and environmental nature."

The rationale for that was largely the fact that the types of occupiers have changed in the past 30 years.

There is provision for that in the bill already, but if we need to look at anything else, I will be happy to hear about it.

Rhoda Grant: It is just that they can do that on land that they tenant, not on land where excess numbers of deer are having an impact. I am not saying that properly—what I mean is that the deer move about and, if they are not caught in the act, the occupier cannot do anything.

Jim Fairlie: That is a good point. We can take a further look at that.

Rhoda Grant: On NatureScot's investigative powers, the notice that it has to give before accessing land and records has been reduced to five days. How are those measures being communicated to landowners in a way that maintains trust and that ensures that they do not feel that they are being set up or ambushed?

Jim Fairlie: It is important to remember that NatureScot will not just turn up at the door one day and give a five-day notice; there will have been plenty of engagement beforehand. The current notice period sits at 14 calendar days, and the proposal in the bill is five working days. The period

has been shortened, because there is a general understanding that although there is a process to go through, if something needs to be done, and quickly, a five-day period will be adequate, particularly as NatureScot will have tried to engage with whoever it is has the problem on their land.

Rhoda Grant: So, this will be at the end of the process rather than at the start.

Jim Fairlie: It will not be anywhere near the end of the process—the end of the process will be much further down the line. It is at the start of a process that NatureScot has previously instigated by trying to communicate beforehand.

Rhoda Grant: But it will not come as a surprise.

Jim Fairlie: No, it will not come as a surprise. If somebody has received a five-day notice, NatureScot will already have made contact with them to say that it has a concern and that it would like to have a conversation. If it gets blanked or refused, it will come back and say, "Right, we need to have this conversation now."

Rhoda Grant: Five days is not very long. If someone were away, would there be an opportunity to negotiate a change to that notice period?

Jim Fairlie: We are making it so that people will receive that five-day notice electronically. Clearly, if somebody is not at their place, it would be sensible and legitimate for them to tell NatureScot that they will not be back until such-and-such a date—just as long as they do not say that they will be back in September in response to a notice that they got in February.

You get the point that I am making. Yes, there will be flexibility, but only within the bounds of reasonableness.

The Convener: Before we move on to our next questions, which are on the register of authorised persons, Emma Harper has a question about data.

Emma Harper: I will be pretty succinct. We know that we need robust data to make decisions on deer management, especially when deciding when to intervene on the grounds of nature restoration, and we know that different densities of deer cause different damage, so how will the Scottish Government seek to address any gaps in deer population data?

Jim Fairlie: There is some disagreement on the estimates. We have an estimate of between 750,000 and 1 million deer, which the deer working group compiled using a range of methods. That estimate includes data on the distribution of Scotland's four species, but I absolutely accept that some people do not believe what that data tells us. We hope that, if people use the NatureScot app, that will give us a much clearer picture and a better understanding of what deer numbers are, in total and in particular areas.

On the day that I was out in Glen Falloch, I was quite struck by the fact that the three deer that were taken out were tagged to the exact spot using GPS, and that was put into the database. If we can get more people using that app, it will build up a data picture and give us a much clearer understanding of what the deer population is. However, as I said, I accept that some people do not agree entirely with the numbers that we have, but I think the estimate that there is between 750,000 and 1 million deer is fairly reasonable.

Emma Harper: Will using drones and different ways to gather the data be part of the on-going data gathering process?

Jim Fairlie: Are we using drones to gather data?

Brodie Wilson: NatureScot carries out a sort-of deer census, and it gathers information through deer counts, using helicopters and other technology. It has a statutory duty to monitor deer populations, and it is doing so at the moment.

Some of the work that we are talking about in relation to the deer app is about increasing the amount of data that we get from the land managers on the ground about their culls. The big picture comes from NatureScot gathering data using technology and counts as well as through data that it gets from people on the ground.

The Convener: When is NatureScot's app likely to be launched?

Brodie Wilson: It is being used at the minute in some parts of Scotland, but it has not been rolled out nationally. We do not have a date to give you now, but we are happy to write to you with more detail about that. It is being used in some places at present.

The Convener: Grand.

Tim Eagle: I am conscious of the time, but I want to quickly touch on an issue. My understanding is that, if there is a control scheme in place, it is registered against the title to the land. We have heard in evidence that that could potentially create a burden on the land, which would transfer if it were sold. Have you given any thought to the potential effects on land value and marketability?

Jim Fairlie: Yes. The important thing is that the order stays with the land, and that is as it should be.

Tim Eagle: If that is the case, would you give consideration to an amendment at stage 2 that would allow for a de-escalation to a control agreement from a control scheme if the land was

sold to a new owner who—taking the goodwill approach that we have talked about this morning—wanted to work with NatureScot?

Jim Fairlie: No, we would keep it as a control scheme at that stage, because people can say anything that they like. The proof of the pudding is in the eating, when they actually come in and start carrying out the measures that are required.

Tim Eagle: There is no procedure for that in the bill, is there? However, you could introduce something that says that, after a certain amount of time—

Jim Fairlie: NatureScot can do that anyway. It can de-escalate a control order if it believes that things are being done in the appropriate manner.

Brodie Wilson: Section 8 of the Deer (Scotland) Act 1996 requires NatureScot to conduct an annual review of any section 8 control scheme, and there is already a process to revoke a control scheme. There is nothing that necessitates a provision for this specific circumstance.

Jim Fairlie: If NatureScot were to de-escalate a control scheme and the new owner said that they would carry that out and then did not comply, NatureScot would be back to square 1. It would land back on the minister's desk to be signed off, and so on. If the order stays with the land, the process is there. It is not about the individual; it is about the landscape-scale management of the deer in the area. If a control scheme stays in place, it is actually an incentive for the people who are selling their land to make sure that they have deer management in place. You generally do not sell an estate at the drop of a hat. If that is one of the preparations that a person has to do to make sure that there is no deer order on their estate, that would be a good thing from their point of view.

Tim Eagle: Your advice is that people should make sure that they are carrying out deer management, so that they will not be selling their estate with a control scheme in place.

Jim Fairlie: It would be far beyond my remit to give advice on how people should sell their land. I will leave that thought with you.

Tim Eagle: Okay.

The Convener: We will now turn to the register of authorised persons. Emma Harper will ask the first question.

Emma Harper: I cannot find the question.

The Convener: Okay, I will kick off the section. What evidence or data suggests that moving to a mandatory level of competence is required?

Jim Fairlie: We want there to be a baseline of competence across everyone who goes out to shoot deer. That is not just about deer welfare; it about public concern and public safety, especially with increasing numbers of deer and more venison entering the food chain. If we can ensure that everyone has the same level of baseline competence, we can guarantee that everyone has the same level of basic food hygiene training and an understanding of shot placement and when not to shoot. Most of our deer stalkers are very competent—there is no doubt about that—but there is evidence that that is not 100 per cent the case, and there is evidence that wounding rates are between 6 and 17 per cent, which is too high for us to ignore.

I had a round-table session yesterday with the British Association for Shooting and Conservation, at which it clearly laid out its concerns about what "fit and competent" means—I absolutely accept that there are concerns in that regard. However, when we did the consultation, 69 per cent of the land management and deer sporting organisations and 74 per cent of all respondents agreed that there should be "fit and competent" standards. There is also evidence that the public would expect us to do that. Notwithstanding the position of BASC, which was clearly laid out to me yesterday, there is clear evidence that other sectors in the deer management groups think that it is the right thing to do.

The Convener: Thank you. Emma Harper has a supplementary question on that.

Emma Harper: Yes, I found the question—it has been a long morning. How will the Government ensure that competence standards under the proposed register do not create undue financial or administrative barriers, particularly for experienced but uncertified stalkers? Some of the organisations that I have met are interested in how we can support experienced stalkers who know the land and what they are doing with transitional measures such as grandfather rights. Is there a way that we can help to support them in the transition?

12:45

Jim Fairlie: That will come in through secondary legislation, and we are more than happy to consider all the concerns that were raised with me yesterday, and the other evidence that the committee has heard in the lead-up to stage 2. I understand that there is some pushback on that.

I return to my original point, however, that 69 per cent of land management and deer sporting organisations said that that level should be the baseline, which would give the public confidence. We are talking about getting venison into the public psyche as a good product to eat—which is

what it should be—as opposed to its being seen as a problem.

There are an awful lot of positives to take from establishing that baseline. As for how we implement it, let us consider that and see if we can ensure that it is manageable.

The Convener: Just for clarification, what is the definition of "accompanied", referring to visitors, especially when it comes to the legal responsibilities and safe deer stalking?

Jim Fairlie: We will have a look at that. Ross Ewing raised that in a previous evidence session, in relation to situations where you can see or hear somebody. Let us consider what that means, and we will flesh that out.

Sam Turner: The word "accompanied" is not used in the 1996 act. The word that is used is "supervised". It is worth making that point of clarification before we go down the "accompany" route.

The Convener: Okay. That is helpful.

Rhoda Grant: Some stakeholders have expressed concern about the levels of competence that are required, especially for people who are new to the industry, to be able to stalk at night or shoot deer in woodland. They felt that the competence and training required were not really adequate. They felt that new stalkers with the proposed level of training could be reasonably dangerous in some situations. Has thought been given not so much to those with a huge amount of experience but to those who are coming into the industry, and to providing bespoke training for the more difficult situations such as night stalking and stalking in woodland?

Jim Fairlie: Stalkers do not need any training at the moment—that answers the argument, as it shows that we really should be doing something. As I said in my previous answer, we will bring in the measures at stage 2, and we will consider the best way to manage those who have been stalking for 30 or 40 years and who are more than competent but who do not have a certificate that says so. We will then consider how to manage the transition, ensuring that everybody gets up to that fit and competent standard.

I absolutely take on board the point that you are making. Right now, stalkers do not need anything at all; they need only a gun licence.

Brodie Wilson: You were talking about night shooting specifically, Ms Grant. There are slightly separate arrangements at present for night shooting when it comes to authorisation and the competence standard required. We will consider that, too, through the secondary legislation. We envisage that there will be a higher standard of competence for such circumstances than the baseline competence. That is the same as it is at the moment.

Jim Fairlie: My apologies for not mentioning night shooting—that was me not listening.

The Convener: Beatrice Wishart has a question.

Beatrice Wishart: Section 32 of the bill introduces an offence of failing to report the taking or killing of a stray farmed deer. Are there any specific guidelines or examples of what would constitute acceptable mitigating circumstances that would serve as a defence?

Jim Fairlie: All that people will have to do is report it. It is not the case that someone will have committed an offence for shooting a stray deer. If someone shoots a deer and it turns out to be a farmed deer, all they will have to do is report it within five days—that is all that is required.

The Convener: We now move on to our final theme, which is licensing for dealing in venison.

Mark Ruskell: How will the Government maintain public confidence in venison if the venison dealer licence scheme is removed? We have heard some mixed views: there is some strong support for removing that scheme to bring more flexibility to the market and to who can sell venison. At the same time, some dealers and companies might be looking back at the 2015 E coli outbreak, with a residual fear around public confidence. I do not know how you are intending to address those matters of food safety and wider public confidence in venison as a healthy product.

Jim Fairlie: The venison dealer licence was not about food safety; it was to prevent poaching. If venison is being sold, it will be sold with the same rigour as any other game. Building confidence is more about us marketing the product. There was some confusion about Food Standards Scotland's position, but it is quite comfortable about us moving the venison dealer licence because there will still be the rigour that there would be for any food product that goes into the human food chain.

There is a far bigger issue about how we market that product as something that we want people to eat. Removing an extra 50,000 head of deer a year is one thing, but we should see that as an opportunity rather than as a problem and we should be saying that venison is another iconic Scottish food that we can celebrate. I will do everything that I can to ensure that we get to that position.

The Convener: Could Quality Meat Scotland have a role in giving confidence relating to health? I am talking not about it marketing the product but about its having a role in ensuring confidence that deer that have been killed on a hill can safely go into the food supply chain.

Jim Fairlie: I think that QMS has more than enough on its plate in dealing with the products that it already deals with. Venison is a fairly unique product and should be marketed as such, and there is a lot that we can do that does not have to be done under the umbrella of QMS. It is also not something that we would need to legislate on. It is fine the way it is.

Rhoda Grant: On the issue of promotion and of getting local communities eating more venison, do you have any plans to look at infrastructure and at things such as deer larders, chillers or micro-processing units? There are some good examples going on, but what is the Government's role and what is the Government doing to ensure that more of that happens to get venison into the food chain?

Jim Fairlie: I think that you took part in last week's members' business debate on deer, during which that issue was raised. Things are happening. We have three pilot projects on the go—actually, that might be two on the go and one still to be done. Stuff is happening now in the pilot projects. One is being carried out on an island, the name of which Brodie Wilson will remind me of.

Brodie Wilson: Jura.

Jim Fairlie: Work is also being done on getting national health service boards to use venison. The good food nation plan, under the Good Food Nation (Scotland) Act 2022, will set out how people should engage with food in their local areas. I encourage local authorities to see venison as a product that is, as the convener said, healthy, that we should be proud of and that we should promote to our schools, colleges and as many other places as possible.

I am seeing far more venison on supermarket shelves than I did previously and I regularly buy venison burgers for my dad, who has a new-found love for them. The more that we, as consumers, consume the product, the more it will become part of our national diet, so that is something that we should all be trying to do.

Rhoda Grant: Is there a way of using some of those infrastructure improvements for other meat, such as beef, lamb and chicken? Meat travels a huge number of food miles, so could we try to keep all of it within local food chains?

Jim Fairlie: We might have to look into some technical issues with that, but I hear your point.

Brodie Wilson: There is a difference between processing wild game, particularly wild deer, and processing other meat, and the facilities often have to be quite different.

You asked about infrastructure. NatureScot has been looking at infrastructure as part of those pilot projects and will continue to do so. We are keen to hear from stakeholders about where there could be more support for infrastructure. Using the facilities for beef as well as venison is a bit more difficult than it is worth, given that there are alternatives that might work better.

The Convener: I take the opportunity to say that I was delighted that Dumfries and Galloway Health Board was one of the first to adopt sustainable and climate-friendly food provision, which is an example of that approach working.

Emma Harper: You spoke about Jura, and we heard during last week's members' business debate that six primary schools have adopted venison as part of their school diet. I assume that we will seek to learn how they did that, so that we can learn from those who have implemented that already, including, as the convener said, Dumfries and Galloway NHS board. That is pretty much my point.

Jim Fairlie: Every local authority will be producing a good food nation plan, so we can all encourage our local authorities to look at how venison can fit into those plans.

The Convener: Sadly, because of the legislative burden, the committee will not have the opportunity to look at the good food nation plans. We absolutely must put that on the record.

Tim Eagle: I have a quick question about the business and regulatory impact assessment, which, as far as I am aware, has not yet been published. When will that be coming?

Brodie Wilson: We need to check in with our publishers, but, fingers crossed, it should be published this week. We apologise for the delay. We will let the committee clerks know as soon as it has been published, so that they can pass that on to you.

The Convener: That concludes our session today, so I thank the minister and his officials for their input.

The committee will now move into private session.

12:56

Meeting continued in private until 13:07.

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