OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs and Islands Committee

Wednesday 11 February 2026

Session 6

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RURAL AFFAIRS AND ISLANDS COMMITTEE
6th Meeting 2026, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Alasdair Allan (Na h-Eileanan an Iar) (SNP)
*Ariane Burgess (Highlands and Islands) (Green)
*Tim Eagle (Highlands and Islands) (Con)
*Rhoda Grant (Highlands and Islands) (Lab)
*Emma Harper (South Scotland) (SNP)
*Emma Roddick (Highlands and Islands) (SNP)
*Evelyn Tweed (Stirling) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jim Fairlie (Minister for Agriculture and Connectivity)
Mairi Gougeon (Cabinet Secretary for Rural Affairs, Land Reform and Islands)
Dr Coby Needle (Scottish Government)
Jim Watson (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Affairs and Islands Committee

Wednesday 11 February 2026

[The Convener opened the meeting at 09:01]

Decision on Taking Business in Private

The Convener (Finlay Carson): Good morning, and welcome to the sixth meeting in 2026 of the Rural Affairs and Islands Committee. This morning, we have Emma Roddick, Rhoda Grant and Alasdair Allan attending remotely. Before we begin, I ask everyone to ensure that their electronic devices are switched to silent.

Item 1 on our agenda is consideration of whether to take item 5 in private. Do members agree to do so?

Members *indicated agreement*.

Subordinate Legislation

Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2026 (SSI 2026/10)

09:01

The Convener: Our next item of business is consideration of a Scottish statutory instrument. I welcome Mairi Gougeon, the Cabinet Secretary for Rural Affairs, Land Reform and Islands, and her Scottish Government officials from the marine directorate: Dr Coby Needle, who is chief fisheries adviser for Scotland, and Jim Watson, who is head of domestic fisheries management.

I invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for Rural Affairs, Land Reform and Islands (Mairi Gougeon): I will start by setting out clearly why action is required, what the order is going to deliver and how we intend to work with stakeholders throughout its implementation. First, I acknowledge the strong views on the issue, and I make it clear from the outset that the purpose of the order is to support the recovery of cod stocks in the Firth of Clyde while meeting both our environmental and our socioeconomic responsibilities. That balance is not optional but essential.

Seasonal management measures have been in place in the Clyde since 2002, but, despite protections having been strengthened over the years, the scientific advice remains concerning. We know that spawning stock biomass is still very low and that, although there are some signs of stability, improvement remains limited. Cod fishing mortality is too high, but, although the precise drivers are not yet fully understood, it is clear that recovery is possible. I know from the evidence that the committee heard that stakeholders differ on how best to intervene, but there was broad acknowledgement of the need to protect the stock, and I believe that this order provides a proportionate and structured way to do that.

I will take a moment to set out what the order and the targeted scientific programme will actually deliver, because I think that there has been some confusion around that. The order will maintain the seasonal closure in the same area for 2026 to 2028, covering all gear types. It will allow limited access for certain creel and trawl vessels to carry out scientific research, complemented by wider research across the Clyde throughout the year, and it will restrict access to the wider Firth of Clyde to vessels with a valid historical track record from 2023 to 2025 and those undertaking authorised scientific work. That is essential, both to support the scientific programme and to prevent any new

or displaced fishing effort from undermining recovery.

Alongside that, the three-year targeted scientific programme will strengthen the evidence base, which has historically been lacking. The programme will draw on all available data, monitor bycatch and discards across all sectors and carry out additional surveys to support future stock assessments. It has been designed together with local fishers and scientific experts, using marine directorate vessels where appropriate and commercial fishing vessels. It is about fairness, consistency and delivering practical, robust evidence. Crucially, the programme enables an adaptive management approach, which means that new measures can be introduced during the three-year science programme as new evidence emerges. To be clear, however, a three-year SSI does not mean that no further action will be taken within that time. Without that flexibility, existing data gaps are going to persist and our ability to implement proportionate, effective measures will be limited.

During the three-year work programme, the policy will be kept under review and we will provide the committee with an annual progress report, thereby ensuring that there is transparency and accountability throughout the three-year period.

Taken together, the order and the scientific programme represent precautionary, proportionate action, a stronger evidence base for the future and a clear alignment with the sustainability and environmental duties that are set out in the Fisheries Act 2020.

If the order does not proceed, that would leave a depleted stock without safeguards at a time when scientific advisers are increasingly concerned about the long-term outlook. I am committed to a sustainable, evidence-based approach that works with local fishers, that is balanced and adaptive and that meets our environmental and socioeconomic responsibilities.

With that, I am happy to take any questions that the committee might have.

The Convener: Thank you, cabinet secretary.

In the last paragraph of your statement, you said that you want to take an evidence-based approach. That does not appear to be what is happening at all. You also suggested that stakeholders and witnesses have expressed a range of views that are different from those of the committee. There was a range of views only in respect of how they thought future policy should be approached; they all agreed, almost unanimously, that the SSI in front of us will not do anything at all to preserve cod stocks.

Having looked through the evidence that we have taken and the various pieces of correspondence that we have received, there seem to be inconsistencies with your letter to the committee—indeed, there appear to be inconsistencies within that letter. It acknowledges that, as the Clyde-specific evidence says there is high productivity, that means that fish disturbance is unlikely to be a major factor. At the same time, however, it suggests that the evidence for disturbance being an issue is lacking. You say:

"there is no direct evidence from the Clyde demonstrating that fishing activity disrupts cod spawning."

Is that correct?

Mairi Gougeon: We set that out quite clearly in the letter that I sent to the committee. As I said in the letter,

"It is correct that there is no direct evidence from the Clyde demonstrating that fishing activity disrupts cod spawning."

However, if you read on, I say:

"It's also true that the Strathclyde model suggests the stock maintained relatively high productivity, at least up until 2019, implying that spawning may not be the main problem limiting stock recovery."

I also set out that the evidence that we have brought forward over previous years when discussing the orders

"was based on a hypothesis about spawning areas … and recent observations of actively spawning cod outwith the closure have cast some doubt on this hypothesis."

There have been a number of developments in the intervening years since I was last before the committee to discuss the previous order, not least the Strathclyde model, which I know was discussed in the committee's evidence session. There are specific issues and data gaps that we need to address in that regard, which is why we have set out the order in the way that we have and are bringing forward these proposals. It is also why we are proposing the targeted scientific programme.

The Convener: I am still confused. All the data suggests that spawning may not be the main problem limiting stock recovery, but this SSI does not bring anything to the table that addresses anything other than spawning. We heard evidence of the economic and socioeconomic impact of the closures, but there is no evidence that the marine directorate is actually doing anything to address the main problem that is limiting stock recovery. It is all about spawning, but there is absolutely no evidence that spawning is the issue here.

Mairi Gougeon: First, the order maintains the closure, which is the precautionary and proportionate approach to take, so that we are at least providing minimum protection for cod during the period of the closure—

The Convener: But it is at a point when they do not need protected—

Mairi Gougeon: I was coming to that, convener, with regard to the purpose of this work. We cannot look at the order in isolation, because the key to the order and the work that is proposed is the scientific programme, which is about filling some of the data gaps. The work that we are proposing to undertake will, first of all, enable us to look at where the cod are actually spawning. We will be able to do more of that work as well as looking at the bycatch across the different fleet segments.

Dr Coby Needle may want to come in on the science points in particular.

Dr Coby Needle (Scottish Government): Good morning, everyone.

Convener, the disturbance point that you raise is interesting. Disturbance was used initially as a driver for the spawning closure in the context of a lack of evidence one way or the other at that time. That is still the case, in a sense, as there is no evidence that disturbance is affecting spawning. Then again, there is no evidence that it is not. We cannot really tell either way—it is a difficult one—although we now have the Strathclyde assessment model, which we did not have previously. That has been published, and it is an excellent piece of work, with which I think we all agree, on the implications of the overall direction of stock dynamics up to 2019.

Since 2019, we have had survey data that has been produced from the marine research vessel Scotia. That is not indicating any stock recovery in the area, so the cod stock is still in a poor state. In a situation in which we have a stock that is maintaining in a poor state, it may be that the spawning closure is preventing it from declining further—we do not know. In general, if you have a stock that is in a poor state and you have a management measure that is trying to protect it during at least part of the year, it does not seem precautionary—or appropriate, necessarily—to remove that measure without knowing much more about the situation.

Allied to the SSI, we have the targeted science programme. Part of the idea behind that is to determine exactly where spawning is happening in the Clyde. The spawning closure was based on a hypothesis about spawning behaviour and the benthos that cod need in order to be able to spawn, but it is a fairly blunt instrument. As we get more information in the future, through the TSP, both from our survey information and from bycatch data that we can get from across the fleet sectors, the intention is that we will get a clearer idea of where spawning is happening. Closures can then be more precisely targeted to those spawning areas, to protect that spawning activity, instead of our taking the broad-brush approach that we are using just now.

That is for spawners, but there is not much point in protecting spawners if we do not then also try to protect the juveniles. At the same time, therefore, the TSP is going to look at where the juvenile areas are in the Clyde, so that we can also try to protect them.

It is about making the management instrument much more evidence based and dynamic as we go forward, so that we are targeting management measures where they need to be and not having them where we do not need them any more.

The Convener: I am still confused, because, in the cabinet secretary's own words,

"the stock maintained relatively high productivity"

despite fishing pressure. That suggests that it is not fishing pressure that is impacting on the cod population, but something else.

I am not a scientist, but the man in the street, looking at that letter, would read the words

"stock maintained relatively high productivity"

—despite fishing pressures, we could add. Are you suggesting that productivity would be even better and that that would then have a long-term impact on the cod population?

Dr Needle: I interpret that as saying that, at least up until 2019, the assessment model implied that the productivity of the stock was maintaining at a relatively high level. What has happened in the six years since 2019, we do not yet know, because we have not updated the assessment model to the present day. That is one point.

It also indicates, as a good thing, that there is potential for the stock to recover if cod productivity is relatively high. We are talking about productivity in the sense that each spawner is trying to produce more young in order to fill the gaps in the population. If we still have high fishing pressure and high fishing mortality—which we think is still the case—for the spawners, although each of those spawners might have high productivity, if there are not a lot of them, if you see what I mean, the stock is not necessarily going to recover all that quickly.

The Convener: Yes, but the spawners are not going to be affected by this SSI.

Dr Needle: But if there are fewer spawners because of high fishing pressure—

The Convener: During spawning, though?

Dr Needle: During spawning and throughout the year—

The Convener: Surely the spawners are there and they are going to spawn. What is going to be affected through the closure is the act of spawning, not the number of spawners—that is down to some other fishing pressure. Is that not what the situation is? There is no indication that the spawners that are there are not spawning. You are suggesting that it is the number of spawners that is potentially causing the issue, but the SSI is not going to increase the number of spawners, because there is no indication that the fish spawn any less because of fishing pressures or fishing at the time of spawning.

09:15

Dr Needle: The closed area of the Clyde currently runs for 11 or 12 weeks. We have, therefore, already removed that element of mortality from the area anyway, so we will have reduced fishing mortality there to a certain extent.

There are arguments about displacement, with activity going to different areas, so the impact on the overall fishing mortality for the year might not be all that significant. However, the closed area is more about trying to give those animals as much of an opportunity as we can to spawn. The productivity argument says that, if they are given the opportunity to spawn, the likelihood is that they are going to produce more eggs in order to try to fill in the gaps.

The Convener: Okay. Thank you.

Rhoda Grant has a supplementary question.

Rhoda Grant (Highlands and Islands) (Lab): Dr Needle, I want to go back to something that you said about the SSI. Did I pick you up right as saying that there could be further measures imposed under this SSI without the need to come back with another SSI? It would concern me a bit if measures were imposed without reference to the Parliament or, indeed, without consultation.

Mairi Gougeon: I will just jump in on that point. As I outlined in my opening comments, the intention of the scientific programme would be adaptive, so we would look to take forward any learning that we pick up through that programme. It is not a case of waiting for three years before we take action, but it certainly would not be our intention to bypass Parliament. Again, as I set out my opening comments, we intend to provide updates.

It is also important to remember that we are taking forward other pieces of work that could well be implemented during the period of the order, if it proceeds through the committee and Parliament. That includes the future catching policy work that we have been working on for the past few years, which is about improving selectivity for various parts of the fleet. It is certainly not our intention that anything would be done in such a way as to bypass Parliament during that period. I do not know whether that is what you are getting at.

Rhoda Grant: I think that it would be better to have an assurance that if any further measures were going to be taken under the powers given under the SSI, those would come back to Parliament and would be consulted on rather than imposed.

Mairi Gougeon: That is the case even with regard to the work that I have just mentioned, such as the future catching policy. We are intending to consult on those measures within the next couple of weeks. All of that will be open to consultation, and we will engage closely with our stakeholders.

I also point out that there will be a working group overseeing the scientific programme, which will have fishermen and other academics and scientists represented on it, as well as ourselves, to oversee that work and how it is implemented. I am happy to keep the committee updated on how that work is progressing—indeed, I made that commitment during my opening comments.

Rhoda Grant: I think that we would be happier with a commitment that you will come back to this committee or a future committee if there are any more closures or restrictions to be imposed, rather than using this SSI to put those through.

Mairi Gougeon: I think that it would be in everybody's best interests to do that. We would want to keep the committee updated if there were to be any changes.

As I said, the whole intention of our approach is that it is adaptive. We take the learning as we go—it is not about hitting the pause button for three years. We would inform the committee of that work and keep the committee updated.

Rhoda Grant: I am really looking for a guarantee that measures would not be imposed without reference to the committee, and without our having the ability to scrutinise and vote on them.

Mairi Gougeon: I might bring in Jim Watson here. If we were to make any substantive changes that would impact the order, it would mean that we could potentially bring forward another order, if one was required at that time. I will ask Jim for further advice.

Jim Watson (Scottish Government): I can elaborate on how we envisage this working with the stakeholders from month to month. The cabinet secretary has mentioned the working group, which will include static and trawl fishers who are working in the area and scientific experts. That is about making sure that whatever resources

are deployed and whatever work is undertaken in the area provide the best value. When new evidence comes along as a result of that research, we will take that back, discuss it with the group and report back through the normal channels.

Rhoda Grant: I am really concerned that you will not give me a guarantee that, if other measures are being imposed, you will bring the matter back to give Parliament the opportunity to vote on them, but I do not think I am going to get that.

Mairi Gougeon: I will provide clarity on one point. The order is specific in that it sets out the area that is closed. Should there be any changes to that, or should we identify that the closure is not in the right place, there would have to be another instrument, because the instrument that we are discussing is for that specific area only. If there were any changes, we would have to consult and provide all the impact assessments that we have provided for that area for Parliament to scrutinise. We would have to do that. That is as much of a guarantee as I can give.

Rhoda Grant: Convener, will I ask my substantive question?

The Convener: No. We have a number of other supplementaries.

Emma Harper (South Scotland) (SNP): Cabinet secretary, you were just saying that this is a specific order and that other work is being done on fishing in general and on other species, other collaborations and working with fishermen, whether they are the pelagic fishermen or the inshore people. Other work is therefore being done that feeds into the intelligence and the knowledge that we use to make these decisions. Is that correct?

Mairi Gougeon: Yes, absolutely. In the past couple of years, some pieces of work have been developed since the last closure. As I have touched on, the future catching policy is probably the key piece of work that we will be consulting on in the next couple of weeks, because it is about ensuring that we minimise bycatch. That work has been going on for a number of years with different fleet segments and it is about trying to improve selectivity.

Some of those measures could be introduced and implemented during the period of time covered by this order, and I hope that it will also improve the situation and minimise bycatch. The policy will be going out to consultation in the next few weeks.

The committee will also be aware of some overarching pieces of work, such as the inshore fisheries management programme. We have been looking at a framework for that and we put out a call for evidence on how we manage our inshore fisheries across the country, looking more towards taking a regional approach.

A lot of work is always being done in our marine environment, and I have mentioned some of the key pieces, but the future catching policy work will probably be most integral to the order.

The Convener: I know that we will come back to the scientific trials a bit later, but I thought that Dr Robin Cook put the issue into far better words than I did on my previous attempt. In our evidence session two weeks ago, he suggested that there are two important points that call into question whether closing a spawning area is the most useful thing to do.

The production rates show that the number of juveniles that are producing females in the Clyde stock increased rapidly before the spawning closure was introduced. That was a direct response to heavy exploitation. Dr Cook said:

> "That means that fish are being caught before they spawn, so, when a spawning closure is introduced, it is too late: much of the spawning potential has already been lost by catching the fish when they are very young. That is why one should ask the question: if we want to produce a more productive or healthier stock, is introducing a spawning closure really the optimal thing to do?"—[*Official Report, Rural Affairs and Islands Committee*, 28 January 2026; c 49.]

Dr Cook was suggesting that the damage had been done before spawning, and the closures have not had any influence on the success of that spawning period. That is what I was trying to get across—that the SSI is not targeted at where the problem is.

Mairi Gougeon: That is why the targeted scientific programme is so important, because it is about making sure that the closure is in the right place. In the letter that I sent to the committee about our basis for the closure, I said that it was that hypothesis about spawning areas, but some recent activity among actively spawning cod outwith the closure has cast doubt on that hypothesis.

There is the bycatch issue as well, which the University of Strathclyde model highlights. Again, the targeted scientific programme is trying to fill all the evidence gaps in the round. It is about looking at what is happening now with the bycatch, because some of the data on that only goes up to 2019. We need to update that by seeing what is happening on the ground, so that we can bottom out the data gaps that exist.

The Convener: We will come on to bycatch later, but what you say suggests that there is already evidence that bycatch, and not spawning, is the problem. I think that that is clear, but I am not going to step on any other member's toes before we come on to that topic.

We move to a question from Rhoda Grant.

Rhoda Grant: What quantitative evidence does the marine directorate have on non-trawl fishing mortality in the Clyde? In particular, what are the bycatch estimates, what data are they based on and how do the creel bycatch estimates compare with those for nephrops trawl bycatch?

Mairi Gougeon: Coby Needle will be able to provide more detail on those specific points in a moment. However, just to be clear, the response that I sent to the committee sets out that it is not quantitative but qualitative evidence that we have. As I outlined in that letter, the scientists at the marine directorate have seen cod and other whitefish in creel catches. Observation work has highlighted that that issue needs to be looked at. Coby will be able to provide more information.

Dr Needle: As committee members will know, the trawl bycatch information comes from our observer programme. It has been successfully run since 1975; there was a pause during the Covid pandemic, but it has picked up again. Part of the TSP is about reinvigorating that observer work in the Clyde. Although there have been observers on the trawl fleet, there have probably not been as many as we would like or as we would need to get a representative estimate. That is the position on the trawls.

As for the creelers, historically it has been difficult to involve them in an observer programme. Creel vessels tend to be single handed, and we have regulations against sending observers on single-handed vessels in case someone falls overboard, essentially because it is a health and safety issue. Historically, creelers have not been included in our standard observer programme.

The information that we have on creel bycatch comes from a number of observations—not from the Clyde but from different parts of Scotland—that suggest that cod can be caught in creels. We are starting a project called codscape, which explores selectivity for cod in creels and how those creels could be redesigned to be less selective for them. That will now be part of the TSP. The cod that we use for the tank experiments with creels comes from a creeler on the east coast who is very capable of catching live cod in his creels. We also have information from the north of Scotland, from trips undertaken on a crab vessel that also had cod caught in its creels. We have information from the recent trials in the Solway crab and lobster fishery, where cod could be seen being caught in creels. We also have underwater footage that we have taken ourselves. We position cameras within creels at different depths and see what is being caught by standard creels in Scottish waters.

A reasonable amount of cod tends to be caught in creels. Because of the structure of the creels, they tend to be small cod. However, if a significant number of small cod are being caught in that way, that will add up to a fairly significant impact on mortality.

The TSP's part in this is to explore whether we can monitor cod bycatch in creels, if it exists. It might be the case that there is no issue with cod bycatch in creels in the Clyde—I do not know. It might be something to do with the cod there, or the creels that are in use, or the environment. It is possible that they are not catching any cod. Part of the TSP would be about demonstrating that, after which we could move forward with appropriate management measures.

However, from observing creels in other parts of Scotland—not in the Clyde, admittedly—our experience is that they are very capable of catching cod. It is a concern, and addressing that issue in the Clyde, if possible, is worthy of further consideration.

09:30

Rhoda Grant: Is it not the case that, if you catch a cod in a creel, you just let it go? It is not as though it dies. It is not as though it is caught up in a net with other fish and, by the time you reach it, it is already dead. If you pull it up in a creel, it has been protected by the creel until it lands on the boat, at which time you take it out of the creel and put it back in the water.

Dr Needle: Part of what we have to do with creel monitoring is to determine not only how many cod are being caught in creels—which, as I said, might or might not be a problem—but the fate of the cod once they are brought on board. If those cod are released straight back into the water, there is probably no issue. As I mentioned, we get live cod for our tank experiments from a creeler. Those are perfectly viable and, if they are put straight back in the sea, that is not mortality; that is fine. However, if they were not put back in the sea and were used for something else, that would be an issue.

Our observations in the past have noted that what tends to happen—on some vessels, at least—is that the cod that are caught are used as bait in subsequent creels. They are not wasted, but, at the same time, they are taken out of the population, so we would need to know about that for the assessment model.

Rhoda Grant: Would it therefore not be more sensible to have a catch-and-release policy than a prohibition on creel fishing?

Dr Needle: That is probably more of a management issue.

Mairi Gougeon: That is why the science programme is so important. It is about evidencing

exactly what is going on, instead of our making assumptions about what might be happening at sea. I do not know whether Jim Watson wants to add to that.

Jim Watson: Only that, under the science programme, we are not prohibiting creel fishing in the closed area. We will be allowing some creel-fishing activity to be undertaken for scientific reasons, and there will be certain conditions on access to that area. It is about trying to build up the picture to see whether this is, indeed, an issue. Coby Needle made the point that it is not just about what is caught in the creel but about what happens as a result—whether the fish is used for bait, put back alive or taken home for a fry. These things need to be looked at.

We also need to consider the type of gear that is being used; we perhaps need to consider the time of year, too. It might not be an issue for 10 months of the year; it might be for just two months of the year when there is a bit of a bycatch issue. The whole point of the scientific programme is to build up the picture for the Clyde, in particular, but it is relevant for elsewhere in Scotland.

Beatrice Wishart (Shetland Islands) (LD): Cabinet secretary, you have described the Government's position as a "risk-based precautionary approach", but the precautions are applied to justify an existing measure, which evidence suggests is the wrong approach and is ineffective. They are not applied to address the known principal source of mortality, which, in this case, is the nephrops trawl. Will you explain the approach?

Mairi Gougeon: The approach that we have set out is balanced, precautionary and proportionate. In my letter to the committee, I set out the evidence on which we based the previous orders and that we are still using for this order. Observations made in the intervening period have meant that we are questioning the hypothesis on which we had based previous decisions. The Strathclyde model has emerged in the interim period, but there are significant gaps in that that we need to fill so that we have the complete picture. We have introduced the order in the way that we have, with the accompanying targeted scientific programme, so that we can get the complete picture and adapt the management as necessary over time.

Beatrice Wishart: Is there credible evidence that creel fishing is a significant driver of cod decline?

Mairi Gougeon: I re-emphasise what I set out to the committee in my letter and what Coby Needle has outlined about observations made by scientists in the marine directorate that mean that we need to look at creel fishing. It might not be a significant driver, but we need to be able to categorically rule it out if that is the case. We need to examine it and ensure that we are looking at all the different parts of the fleet, so that we get a complete picture of fishing mortality, as well as trying to fill the other evidence gaps.

The important thing to remember about the model is the lack of historical data that is counted as part of it. No data from the past seven years has been used, and there have been closures during that time. We do not have information about creel bycatch.

It is important to work on a precautionary basis and at least maintain the closure. As Jim Watson has outlined, and as I discussed in my opening comments, there will be some limited activity through the closure for scientific purposes. I believe that the approach that we have set out is a proportionate, balanced one to take.

Beatrice Wishart: Can you explain why a period of three years is needed? It has been suggested that one year would be a much better option than blocking things off for three years.

Mairi Gougeon: I will bring in Coby Needle on that in a moment. Our proposal was based on advice from our scientific advisers as to why three years would be appropriate. I emphasise, however, that that does not mean that nothing will happen within three years. We want the management approach to be adaptive if there is learning or if we are collecting evidence in that time. It is not as though we will hit pause on everything for three years.

Dr Needle: The three-year period is an estimate. Let us say that we start a new survey in an area of sea. We generally would not use the information from that survey for about three to four years, because there might be something unusual in the first or second year, and we need to build up a time series of information. The point about running the targeted science programme for three years is that we will have a set of observations from the first year, and we will see those observations again in the second. We will then start to get a picture of the true situation underlying it all. By the third year, our uncertainty in our estimates will start to reduce significantly.

The first year might be a really cold winter or a very warm summer, for instance—we do not know. There could be something very unusual in that year, meaning that we would have to take the data from that first year with a pinch of salt. In building up the observations, we therefore tend to go for a minimum of three years, as in this case.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): I will pick up on some of Rhoda Grant's points and on Dr Needle's comment about the policy of not putting people on one-man boats to gather data. I

have been on those boats. I do not want to approach this through anecdotal evidence but, like Rhoda, I am not sure that I understand how the supposed cod bycatch by creelers is being measured if people are not being sent out on one-man boats to measure it, or how you would propose to get past that. That certainly seems, from my anecdotal knowledge, to be quite an unusual thing compared with practice in the nephrops trawl sector.

Mairi Gougeon: Coby Needle might want to add more information on how we monitor that. We would be looking to utilise remote electronic monitoring—REM. We have used it in relation to the Solway fairly recently, and I think that having that equipment on vessels has been quite successful. Coby will have more information.

Dr Needle: On the Solway crab and lobster example, the fisherman is asked to hold berried lobsters up to the camera—it is a tablet with a camera, essentially—and they proceed like that. There are a number of different ways to do it. If we were looking at cod bycatch on a creeler, specifically, we could ask the fisherman to hold up each cod that he is taking out and putting back in the water—he could just hold it up to the camera. In a more advanced version, the fisherman might have a length board in front of the camera. He could put the fish down on the length board before putting it back in the water.

Through that means, we would get an estimate of the abundance and the propensity of cod bycatch in creels. You could go further and start to get an indication of length distributions as well.

We would expect most cod caught in creels to be quite small, young fish, because of the way in which the creels are set up. The information would be important for the stock assessment model.

Mairi Gougeon: I come back to the working group that will be overseeing that activity, which I imagine will also feed into the process, because it is important to emphasise that it will have fishermen as well as scientists represented on it.

Jim Watson: Moreover, in addition to the technology—that is, the remote electronic monitoring tablets that Coby Needle referred to and which have been procured and are ready to deploy—we will be looking to deploy across the creel sector basic tracking devices, which will help to build up a picture of where the fleet are actually fishing.

The Convener: Cabinet secretary, your letter states that

"reducing or eliminating cod from creels would have a positive impact on the health and sustainability of cod stocks".

Surely that rationale should also apply to reducing or eliminating bycatch from nephrops trawls. Why is the SSI not proposing any measures to tackle that problem?

Mairi Gougeon: The bycatch issue is part of the work that we are doing on the future catching policy. However, on the subject of existing models, I know that I have talked about our not having any data from 2019, but it would be fair to say there have been selectivity developments since then. Indeed, that is what the scientific programme is all about—it is about our discovering the actual extent of those and considering other work to improve things.

Jim Watson: Just to add to those comments, I point out that, although the orders are clearly specific to the Clyde, the future catching policy involves a key plan and a programme of work that is part of our strategy and has been undertaken in partnership with the fishing industry and other stakeholders over the past 18 months to two years. It takes a sector-by-sector approach, and the one that is most relevant to the Clyde is the small inshore nephrops fleet, which we know, because of research undertaken before 2020, is a relatively clean fishery. In the evidence that the committee heard a couple of weeks ago, a figure of less than or around 1 per cent for bycatch was quoted, and that is right.

It is also important to emphasise that, since then, there have been technical improvements in the selectivity of the nephrops trawl fleet, and the future catching policy consultation will include recommendations for further improvements to improve selectivity and, we hope, reduce discarding.

The Convener: Thank you. I call Ariane Burgess.

Ariane Burgess (Highlands and Islands) (Green): It would be great to hear a bit more about selectivity and the technology that you have been looking at, as well as the future catching policy. We were challenged at the round table with stakeholders to develop smarter policy—you might have picked that up, too—and it is clear from what you have been saying that this SSI does not sit alone and that other things are happening. It would be good to hear about those things, because we have heard some people talking about Swedish mesh, or something, being used in a trawl net, others saying that that is not happening, and others talking all the other things that are happening. It would be good to know what is already happening in this space and what you intend to bring in.

Mairi Gougeon: I think that I will probably hand over to my technical experts to respond on the specifics of that question, but I am happy to write to the committee when the consultation on the

future catching policy is launched either next week or within the next couple of weeks, because that will have all the detailed information as part of it.

I do not know whether Coby Needle or Jim Watson wants to come in on the technical specifics.

Dr Needle: With regard to the trawl selectivity devices, we have been working for a number of years with the industry and our research vessels on devising methods of trying to eliminate fish from nephrops trawls, and the Swedish grid that you mentioned is one such method. It is a fairly rigid metal grid that tends to deflect fish away from the cod end and allows nephrops to pass through, and it can be quite successful.

However, our industry found it difficult to use. It was quite cumbersome, and there were health and safety issues with trying to get it back on board. We have subsequently developed a sort of flexible plastic version that gets around some of those issues. I do not know the extent to which it is being used in the Clyde fleet specifically, but I would agree that the information that we are getting is that, certainly since 2019, the use of these devices has increased within the sector.

Once we get the assessment model up to date by using the more recent data up to 2025, we might get a different impression of bycatch in that particular fleet.

On the creel selectivity issue, I have already mentioned that we have started the codscape project. It is early days, but the project is looking at creel architecture that is less available or attractive to cod and other white fish such haddock and whiting. We want to devise a creel that targets only the crab and lobster that we are trying catch. That is some more work that we are doing.

09:45

Jim Watson: You probably heard in evidence that the nets that are used for the nephrops trawl on the Clyde are designed not to catch fish. The fleet do not want to catch fish; they have a limited quota for any fish that they do catch, so that makes sense.

Measures to improve selectivity were introduced five years ago, including the introduction of the square mesh panel. Again, depending on the size of the vessel, it can be between 2m and 3m in length, so it is 300mm. This is getting quite technical, but, depending on the species, any fish that come in will tend to swim up and escape through the square mesh panel on the net, allowing the nephrops to stay in.

As I said, the future catching policy of the specific small-vessel nephrops fleet has been looking at a number of improvements, including increasing the mesh on the cod end and looking at changes to the square mesh panel, for example. That is all subject to consultation, but it has been informed by months and months of engagement with the fishing industry and other stakeholders.

Evelyn Tweed (Stirling) (SNP): Good morning. Thank you for your answers so far. I can see that the Government is trying to protect stocks and get a stronger evidence base. However, I want to clarify some of the remarks that you have made about the process. You have talked about an adaptive process and an annual progress report, which is welcome. I presume that, if the evidence changes along the way, the Scottish Government's approach will also change, on an on-going basis. You have said that there will be discussions with stakeholders and the committee and that the Government will be listening. Crucially, if the process works in the way that the Government intends, there will be no surprises. Although it is a three-year SSI, it is not set in stone. There will be an on-going process, with discussions with everyone along the way. Is that correct?

Mairi Gougeon: It might be helpful to talk about some of the engagement that has taken place so far with the industry and our higher education institutions in developing some of the work that we are taking forward.

You are absolutely right that some of the criticism has been about the period of the closure and the fact that it is a three-year SSI when previously there has been a two-year SSI. On the rationale that Coby Needle has set out for the period that he believes is needed and is recommended, it is important to build the scientific picture.

I have to emphasise that it is not a case of hitting pause for that time. We know about the gaps in evidence and the scientific programme has been developed to help us to fill those gaps. Should there be any need to change or adapt the closure, as I set out to Rhoda Grant, we would have to bring forward another order and we would absolutely do that within the time if that is how the picture develops.

We also continue to work closely with industry. I have touched on the working group that will oversee the programme of work, which is critical because we need to work closely with the fishing industry as well as with scientific advisers and policy advisers in the marine directorate. It will be a collaborative piece of work, should the order be approved by the Parliament, of course.

I will hand over to Jim Watson, who will be able to say a bit more about some of the engagement that has taken place.

Jim Watson: I will not elaborate too much more on the working group, but I will emphasise some of the discussions that have taken place with stakeholders over the past few months. With regard to the fishing industry, we have had lots of positive discussions with the Clyde Fishermen's Association in particular, as well as with others. I have also engaged with colleagues in Northern Ireland, for example, who have an interest in the fishery. The discussions with the Clyde Fishermen's Association, in particular, have centred around the implementation of the science programme and the conditions around access to the closed area. Those discussions have been really productive. We are pleased with how they have gone.

We have also been having discussions with not only representatives of the Scottish Creel Fishermen's Federation but individual fishermen. They have been reassured and, in some cases, I think it is fair to say, relieved at what we have told them about the access arrangements and the type of work that we will be doing in partnership with them.

Evelyn Tweed: From the evidence that we took, it was clear that the fishing industry wants to be involved in those conversations and to know what the science is saying, so that it can think about its business and how it will do things in the future. That is really important.

Cabinet secretary, do you know what the annual progress report to committee might look like and what it will include?

Mairi Gougeon: On your first point, the fishing industry has to be an integral partner in this work, which is why I welcome the fact that we are working closely alongside it.

It is not possible for me to set out right now exactly what the annual report will look like. However, we have set out what we are looking to do through the scientific programme and I expect that we would be reporting on how that work is progressing, on what stage it is at in each of those phases and on the evidence that we have found to date as we provide those progress updates—as well as on whether that means that we will see any changes.

As we have talked about a few times today, we will also be consulting on the future catching policy. That will take a few months to go through, and there will also be a period of time to implement it afterwards. We will also be able to update you on progress in relation to that in the annual report.

Tim Eagle (Highlands and Islands) (Con): I know that the issue has been covered before, but I want to go back to spawning disturbance. Will you highlight again, cabinet secretary, what Clyde-specific evidence supports the spawning disturbance rationale, which is being used to remove exemptions for creels? If there is none, why retain that prohibition?

Mairi Gougeon: I have been clear on that at committee and I have set it out in the letter; I have set it out verbatim and I have repeated it already today. We have said that there is no direct evidence from the Clyde that demonstrates that. We do not have direct evidence that shows that fishing activity is disturbing spawning cod. However, we also do not have evidence that shows that it does not disturb spawning activity. We recognise the issues and, as I have set out in the letter, through some of the observations, we have found actively spawning cod outwith that closed area, which suggests that it is something that we need to look at.

Spawning closures are not rare. We use them in other areas, such as through the North Sea cod avoidance plan. They can be an important measure, but all of what we have set out in relation to the closure and the scientific programme is about filling those evidence gaps.

The Convener: I still cannot get my head around a policy that is based on no evidence one way or the other. We will not revisit that—we have done it to death—but it seems very strange that, even with the precautionary principle, there is no evidence whatsoever that disturbance, in fact, reduces spawning. In effect, the spawning is not the issue here. However, we will move on.

Emma Harper: Cabinet secretary, you have already touched on working with the other fisherfolks out there. I am interested in how you plan to embed co-design and transparency with the local fishers. Last week, we heard from one of the fishermen, Sean McIlwraith, about his experience. I am interested in how you plan to build and enhance trust with the fishermen, so that we look at the whole process.

Mairi Gougeon: I hope that we have been able to do that through the work that Jim Watson has outlined. Ultimately, we cannot do this without the fishing industry being involved in the collaborative work on the scientific programme.

I absolutely recognise the impact that the closure has had on some businesses and fishermen. It was really difficult to hear some of the evidence that the committee has taken in previous weeks about the impact on some fishermen, but that is why the work that we are developing in partnership with them is so important. I hope that, when everyone is part of the process, we will all see the value of that.

We recognise the evidence gaps that exist. The programme is about filling those gaps and

ensuring that any management measures that we impose in coming years are based on the best available evidence.

Emma Harper: Elaine Wyllie told us that she is totally open to engaging and working with you all. Obviously, you will welcome that. Can you say a wee bit about that?

Mairi Gougeon: Absolutely. Jim Watson will be able to say a bit more about that, because he has been engaging closely with Elaine and other individual fishermen.

Jim Watson: We have a good, strong working relationship with the Clyde Fishermen's Association, as we do with almost all fishing associations around the coast of Scotland. That does not happen overnight. It happens because we go out and speak to the individuals and the association representatives in their patch.

When it comes to rebuilding trust, it is a question not only of having those relationships but of being able to explain the rationale for the measures that are proposed and, at a more practical level, how those affected will be engaged with during the implementation process and over the three years.

It is also important to emphasise the breadth of views that exist out there, which I would describe as polarised. The committee will know that from the evidence session two weeks ago. It is a highly charged topic, for sure.

It is important that we put in the legwork on the ground and that we engage with the associations and individuals. That is what we have done and will continue to do, primarily through the working group that has been mentioned.

Dr Needle: It is clear that working with the industry is critical to the success of this initiative. There are a number of things that we in the marine directorate can do. We can put in additional survey stations in the Clyde—in fact, we are planning to do that next month—and we can bring the data for the historical assessment up to date. However, although there are some things that we can do ourselves, when it comes to evaluating the presence or absence—as the case may be—of bycatch across fleet sectors, we need the input of, and collaboration with, the industry in order to achieve that, otherwise we will not get anywhere.

So critical is the bycatch question that, if we do not have the help of the industry with that aspect, we will not get much further forward. We must work closely with the industry on that.

Tim Eagle: Beatrice Wishart touched on the fact that biannual closures might be better than the three-year period that is proposed in the SSI. Correct me if I am wrong, but I think that you are saying that you have suggested a three-year period because that three years' worth of data is worth having. Beyond the need for that data, is there any evidence that demonstrates why a three-year period is necessary?

Mairi Gougeon: We proposed the three-year scientific programme on the advice of my scientific advisers about the time that would be needed to build a fuller picture. However, the fact that the SSI provides for a three-year period does not mean that we are committed to a static closure—it is simply a question of keeping the protections in place and providing stability while we build an evidence base.

Would you like to add to that, Coby?

Dr Needle: In the first year, we will start to get an idea of what we are looking at with regard to bycatch, spawning locations, juvenile areas and all the other kinds of stuff that we are trying to measure, but it would probably be premature to jump at that, as it were—to do too much with that initially. In the second year, we will start to build up a stronger picture of what the evidence base is telling us, and, once we get into the third year, we will have an even clearer idea.

However, that is not to say that, after the first year, we will not be able to start considering, at least, whether the information is strong enough to allow us to move forward with alternatives.

Tim Eagle: The point that I am driving at is that you are not looking for a particular outcome at the end of the three years; this is all being driven by the underpinning science programme. There will not be an outcome at the end of the three years, but the science programme will define what happens as we move forward. Does that make sense?

10:00

Mairi Gougeon: The model will help to fill the evidence gaps that exist, so that we can base any decisions from that point on the best available evidence.

The Convener: Do we need legislation to allow the TSP to go ahead? There have been great examples of the marine directorate working with stakeholders in the Solway on remote electronic monitoring through the use of cameras to record berried hen lobsters and so on. That involved close collaboration and has been welcomed by the industry, so why do we need legislation to allow the TSP to go ahead?

Mairi Gougeon: Technically, we do not need legislation to allow the TSP to go ahead. The TSP is not part of the order, but the two work in parallel.

The Convener: Well, it kind of is part of the SSI. It looks to me as though the only reason for its

inclusion in the legislation is to allow the TSP to be carried out during the closure. If there was no closure, we would not need any legislation to allow the scientific data collection to take place.

Mairi Gougeon: The area is generally open to fishing, so, if we do not have the closure, we will lose even the minimum protection for cod at a time when, as we know, the stock is under pressure.

The Convener: My argument is that the closure will be in place to protect spawning, but the evidence suggests that there is not an issue in that regard, so do we need legislation? One of the driving arguments in favour of the SSI is that it will give us a fantastic opportunity to collect data for three years, but legislation is not needed for that, because there are great examples of the marine directorate and stakeholders working together collaboratively on sustainable fisheries. The only reason why the SSI is needed relates to whether people are allowed to fish in the closed area.

Jim Watson: The science programme and the order work in parallel and support one another. We have already talked about the adaptive approach that is being taken.

A point that I suggest is being lost is that, as part of the wider package, we are also restricting access to the wider Clyde, with reference to the track record. If someone has not fished from 2023 to 2025, they will not be able to access the wider Clyde—not the specific closed area that we have been talking about for much of the meeting but the wider Clyde. That is important, because that will provide a degree of protection for the science programme, prevent any potential influx of visiting vessels from coming in and provide stability during the period. We have talked quite a bit about the importance of protecting spawning, but the new evidence that we have received from the consultation shows that there has been a clear shift towards measures to reduce bycatch and fishing mortality. Putting in place that type of protection will be a big step in helping to achieve that.

The Convener: Emma Harper has a supplementary question.

Emma Harper: I just want to quickly correct the record and say that, when I said Elaine Wyllie earlier, I meant to say Elaine Whyte.

The Convener: Thank you.

Ariane Burgess: I will continue the questioning about the targeted scientific programme. It is good to hear that the programme could still take place even without the SSI.

In 2024, the Government committed to an enhanced science plan for the Clyde to improve scientific observations, and we now have the TSP. Why, after repeated scientific initiatives, are you not in a position to consider alternative approaches? When will that position change? Given what has been said this morning, it feels as though you are not confident that you are seeing the whole picture, but everything points to the problem being the significant amount of bycatch from a nephrops trawl resulting in a high fish mortality rate. An alarm is being raised about that high fishing mortality, which is expected to remove around 80 per cent of the biomass each year.

You are putting something in place, but it seems to me that we already have the data, as we heard in evidence from the scientists at the round-table session. You now say that we must have more scientific evidence from creelers and look at their bycatch, yet alarm bells are being sounded about an emergency situation because of the massive reduction in biomass.

Can you tell me a little about the 2024 science? What did you do and what data was gathered? What has changed, and what was not delivered that means that we need the TSP? That would be a helpful start.

Mairi Gougeon: There was a lot in there, but I will try to address it.

Ariane Burgess: Yes, there was a lot. You have help, though.

Mairi Gougeon: You talk about the crisis and trying to address the pressures of fishing. However, one key point is that, if the order is annulled, there will be no protections in place and the area will be open to fishing.

In relation to what has been found, obviously the Strathclyde model is critical, but there are limitations in that work and uncertainties that mean that we must be cautious when applying it to our management decisions. As I touched on, no historical data is available from the period before 2002, because a lot of it has not been digitised. Part of the scientific programme work is about digitising that information. Further, there is no data beyond 2019, as the information has not been updated over the past seven years. There is a lack of data on the creel bycatch.

On top of all that, because we have not collected the data for the past seven years, the data does not take into account the impact of the closures and orders that we have had in place during that time. The programme of work that has been set out is about addressing those measures.

We have talked about the potential issues with disturbance and whether we have the measures in the right place. The work is designed to look at that in closer detail. I will hand over to Coby Needle, who will be able to provide more information on that.

We are doing other pieces of work to tackle the bycatch issues, so there have been improvements in that seven-year period. We will consult on the future catching policy, which is about those selectivity improvements. It is important to bear all of that in mind.

Dr Needle: Since 2024, when we last had this discussion, the surveys in quarter 1 and quarter 4 have proceeded as planned on the Scotia. Those were outwith the closed area in quarter 1, because the Scotia was not allowed in—no one was. Every year since 2024, we have had between three and four stations in the Clyde, depending on the weather. We now propose to extend that number to 12. In essence, we are increasing the density of survey stations by three times, which will improve the information that goes into the stock assessment model.

In the post-Covid period, we have been able to send observers on the nephrops trawl fleet. That happens less often than we would like, for a number of reasons, but we are trying to reinvigorate that arrangement.

It is worth mentioning that science does not always succeed. We did passive acoustic monitoring using two or three PAM devices in the Clyde. One of them was there to test for marine mammals in the south Arran marine protected area, and we used a couple more to determine whether we could hear the grunting noises that male cod make during spawning or mating. However, the radius of detection of the monitors was too small to enable us to hear anything, so that was a bit of a fail, but we tried.

The Strathclyde assessment model has now been published. It had not been published when we met previously and the thesis had not been examined, so that was still in development, but we now have that. It is interesting that you said that the clear conclusion from that work is that the driver of high fish mortality is the nephrops trawl fleet. That is a circular argument. Excellent though the assessment model is, in recent years, it includes bycatch data only from the nephrops trawl fleet, because the scientists did not have access to bycatch data from the creel fleet, because we do not have any. That is fair enough, but, to use bycatch information from trawlers only and then conclude that the only way to improve fishing mortality on the stock is to penalise the trawlers is a bit of a circular argument that is not necessarily fair or proportionate across the fleet sectors. That is part of what we are trying to do in relation to the creel bycatches to address that issue, if it is an issue.

Ariane Burgess: But all the evidence that we have had suggests that the bycatch from nephrops trawlers is the problem that is ringing the alarm bells. It feels to me as though this SSI is saying, “Oh, but let’s look over here, at creelers.” I was talking about trawlers in another session and the conversation always ends up going back to creelers. I hear your point. You want to look at the creeler bycatch, but, from the data, it looks as though it is going to be a small amount. You are busy putting time and effort into looking at the bycatch from creel fishing while this alarm bell is ringing and saying, “This is the problem.” Yes, there will be future catching policies and other things that will come in, and there is a bigger context and picture, but you could do this TSP without having this SSI in place.

Mairi Gougeon: First, this is not about focusing on one sector over the other, it is about getting a complete picture of what is going on. It is not a case of only doing work on creels, where we do not have that information, it is also about observers on the trawlers seeing what is happening.

This is a piece of work in the round to look at what is going on in that area across all fleet segments. It is not a case of picking on one or the other. If we want to have an up-to-date model that is based on the most up-to-date information and get a complete picture, we need to fill those evidence gaps.

Ariane Burgess: It feels as though there is now a focus on creelers, but we know that cod stocks have declined from around 1,000 tonnes in the mid-1980s to 20 tonnes in 2019. That is an alarm bell ringing there and it is connected to bycatch from the nephrops trawl.

Mairi Gougeon: I disagree with your first statement, purely because this is not about a focus on the creelers. We are focusing on creelers and trawlers through the science programme to fill the evidence gaps. It is about trying to get a complete picture across the piece; it is not about focusing more on one over the other.

Dr Needle: I will say again that the conclusion that high fishing mortality is due to nephrops trawlers is a function of the assessment model using bycatch information from the nephrops trawlers only.

The more anecdotal or video-based information shows cod being caught in creels as bycatch, but that might not be an issue in the Clyde, so we can have this discussion again once we know more. I would hesitate to recommend reaching that conclusion without an awareness, knowledge and estimate of the creel bycatch. If it is significant—let us hypothesise that there is significant bycatch of cod in creels—and we enact management measures for the nephrops trawl sector only, that is not fair or proportionate. Moreover, it might not achieve the mortality reduction that you are seeking if cod are still being caught in creels. We

might be wrong in that—it might be that they are not being caught in that way—but we need to have that evidence in order to reach that conclusion and to have management that, as I have said, is fair and proportionate. Otherwise, we are, I think, just guessing.

10:15

Ariane Burgess: Let me think this through a little bit. I should say that I thank the Shetland Fishermen's Association for educating me on the different gears with its wonderful annual handbook that shows you all the pictures. To my mind, if you have a big net moving across the surface of the sea, you will have a lot more juvenile cod bycatch than you will if you just have a pot sitting quietly on the seabed.

Dr Needle: But the thing about a pot or a creel is that it is baited, so it has a radius of attraction. It brings in crabs, lobsters and nephrops, which is what the fishermen are trying to catch, but it can also bring in fish, including cod, from the neighbouring location.

Ariane Burgess: Okay, but I still think that if you trawl with a net on a regular basis you will be covering a lot more space and therefore have much more bycatch than you will from pots sitting on the ground.

Dr Needle: Maybe, but you could also say that fish can, to a certain extent, swim away from trawls; they can get out of the way, sometimes. Creels have this attractive quality because they are baited, and there can be quite a lot of creels in the water at any one time. Jim Watson will know more about that than I do.

Jim Watson: I would just go back to my earlier point that the gear currently being used in the Clyde by the nephrops trawl fleet is designed not to catch fish, because they do not want to catch them. It is a relatively clean fishery, and, actually, a relatively small number of vessels, both creel and trawl, work in that area. We estimate that around 3,500 creels are normally worked in the closed area. Those creels are fishing all the time—as Coby Needle has said, they are baited—so it is important to compare that with a trawl from a number of mobile vessels that are working in the same area.

I just want to emphasise that the science programme is looking at both the trawl fleet and the creel fleet. For the nephrops trawl fleet, it is important that we incorporate more up-to-date information on bycatch as well as on the new gear that those vessels have been using for the past five or six years.

Ariane Burgess: I find that—

The Convener: Ariane, we have to move on. I have a supplementary from Beatrice Wishart.

Beatrice Wishart: Just for clarification, are you saying that the science programme is focusing on bycatch rather than seabed disturbance?

Jim Watson: It is broader than that, yes. It is looking at bycatch in both the nephrops trawl fleet and the static fleet.

Beatrice Wishart: But what about the emphasis on disturbance of the seabed and its impact on spawning? Where does that feature?

Jim Watson: Coby Needle might want to come in on that.

Dr Needle: Bycatch is one issue and the location of spawners and juveniles is another. We want more finely distinguished spatial impressions of where cod are spawning in the Clyde to ensure that, if we have closures to protect spawning fish or to prevent their being disturbed, they are more finely targeted at where the fish are doing that activity. That is another part of the TSP.

The Convener: I call Rhoda Grant.

Rhoda Grant: We know that the targeted scientific programme does not need the SSI, but it has been presented as justification for extending the closure. The TSP is not even examining the effectiveness of the measures implemented through the SSI, and we have heard that there is no evidence whatsoever that the measures are effective. Why should we support the order, given the financial and social impact?

Mairi Gougeon: I fully recognise the impact of the closure. For us, it is about maintaining at least the protection for cod that will exist with the closure. As Dr Needle just outlined to Beatrice Wishart, the key aims of the targeted scientific programme are ultimately to improve the estimation of bycatch mortality through an examination of the fleet dynamics, as well as to improve the estimation of the spawning and juvenile distributions across that area, so that we can ensure that any closures or management measures that we put in place are in the right areas. Again, we are filling those evidence gaps so that the model is running with the most up-to-date information that we have available. However, it is important to note that we cannot just open up the area again. We need to be able to maintain that closure. That is the proportionate precautionary measure to take.

Rhoda Grant: But it has had no impact. It seems to me that we should have been carrying out the science long before now but keeping in place measures that are having a financial and social impact, as justification for the TSP simply

does not work. That is probably not something that you can answer.

Mairi Gougeon: I would say, though, that scientific work has been done on the background to the measures, as Dr Needle outlined. Unfortunately, some of it just did not work, or it did not work in the way that we might have expected, and we did not get the information that we required. Also, since the last order, the Strathclyde model of assessment has been published, which is a helpful move forward.

We are saying that there are uncertainties around the model and that we need to ensure that we are using the most up-to-date information. We are filling the gaps that we know exist as part of that model, which is why the work that we have set out is so important.

Emma Harper: I have listened to everything that has been said this morning about what we need to do in terms of scientific research and continued engagement with all the people on the water. What would be the consequences of annulling the SSI?

Mairi Gougeon: If the SSI were annulled, the area would be open to fisheries. We would not have a closed area, and that would be a concern, given what we know about the condition of the stock.

Emma Harper: Would some vessels still be able to undertake research?

Mairi Gougeon: There would be limited activity through the scientific programme, so there would be some degree of access, which would allow some of the scientific work to take place.

Jim Watson: To add to that, if we had no measures in place, then, given the health of the stock, we would be acting at odds with the objectives of and our obligations under the Fisheries Act 2020.

Emma Harper: That act is about protecting stock and making sure that we have sustainable fisheries.

Mairi Gougeon: The act has a number of objectives that we have to meet: the precautionary objective, the scientific objective and the sustainability objective. We are trying to balance that responsibility with the socioeconomic considerations and the wider impacts that Rhoda Grant touched on.

The Convener: But the closure is based on disturbance.

Mairi Gougeon: Again, I have outlined all that in the letter to the committee. We have said that we are basing our approach on the evidence that we have presented in relation to previous orders, but we recognise that what we have observed in that time questions the hypothesis that we would base that approach on. That is why the scientific work is important. It is about filling those evidence gaps as well as looking at the wider bycatch issues across the fleet.

Alasdair Allan: Can you give us a picture of what role the Parliament would have over the next three years in assessing the effectiveness of the measures and any new data that might come the Government's way?

Mairi Gougeon: We are keen to keep the committee updated on the work, because I appreciate how much interest there is in the order and the broader impacts, given the views that the committee has heard from a wide range of stakeholders. I committed in my opening comments to providing the committee with an annual update on that work, but we will also keep the committee updated on other pieces of work that could impact the work, such as the future catching policy, which we have touched on today. Clearly, if evidence emerged during that three-year period that suggested that we needed to adapt the closed area or make significant changes that would mean that another instrument needed to be brought forward, that is, of course, what we would do.

Alasdair Allan: You mentioned the possibility of new legislation. If such data emerged, would there be powers available to the Government to make changes to the measures without needing to return to the Parliament for new legislation?

Mairi Gougeon: I do not think that we would have the power to change the closed area. I do not know whether Jim Watson has further information about that.

Jim Watson: There are some different measures that we could use. We regularly use what are called licensing conditions, which is a route that could certainly be used in such an instance depending on what information came through and what new data was provided. That would be done through discussion, primarily with the working group.

Alasdair Allan: Thank you.

Tim Eagle: We are moving on to questions about socioeconomic impacts. As much as I love all the various stakeholders who appear in front of the committee, there is always something compelling about hearing evidence from people who perhaps do not always join in with the parliamentary process. The two fishermen who represented the Clyde Fishermen's Association the week before last were important in that regard.

The business and regulatory impact assessment suggests that creel vessels may lose up to 26 per cent of their annual profits and

nephrops trawlers may lose up to 49 per cent. What assessment has the Government made of that impact? How do you consider those losses to be proportionate?

Mairi Gougeon: You can see in the BRIA all the assessments and the information about how we considered the approach against all the different options. I read back the evidence that the committee heard, and I have heard that point directly from fishermen. It is hard to hear, because any decision that we take will have real-world consequences—there is no getting away from that.

We are trying to balance those consequences against all the legal obligations that we must satisfy. We need to take all that into consideration when we make decisions across the Government, whether for this SSI or otherwise. Where possible, we want to try to minimise any economic impact of the decisions, but that is not always possible, because we need to make sure that we are meeting our legal obligations.

You heard directly from the fishermen, as well as from Elaine Whyte, who quantified what the closure means for their vessels. Although it has been possible in previous years for some vessels to move elsewhere, that has not been the case for all of them. That is also getting increasingly difficult to do because of things such as increases in fuel costs.

We always take all those factors into consideration, and we ultimately try to reach a balance as best we can.

Tim Eagle: In this case, you have considered all that and said, "What we are doing is proportionate." However, many members around this table are frustrated because the policy is not proportionate or balanced—that is definitely the view that has been expressed in the consultation responses. There were two fishermen sitting in this room who were upset about what has happened to their communities in the past 20 years. They might have felt differently if they thought that there had been an outcome from the closure, but they do not think that; they feel that their communities have been harmed by the closure, and they are now facing a three-year extension to it.

Nobody really knows what is happening with the closure. Some groups are saying, "Maybe we should do it, because what will happen if environmental non-governmental organisations come in and try to blow this up into something bigger?" I am not suggesting that the ENGOs would do that, but those groups are scared about things getting even worse if they were to do so. Others are saying, "Look, don't go ahead with this—it's madness. We don't know what we're doing."

Despite all that, and despite all the consultation responses—which I am sure that you have read—do you still think that the closure is a proportionate response?

Mairi Gougeon: You touched on a few important factors and issues that I want to come on to. What has been and will be important about the work that is being taken forward in relation to the SSI is the targeted scientific programme. That programme is directly engaging with the industry so that, a few years down the line, we will all—I hope—be able to have a clearer position about the situation. I hope that we will have the most up-to-date science, that we will have filled the evidence gaps and that we will have a clearer picture of how we can best manage that area of the Clyde to ensure the recovery of cod, which scientific advisers believe is entirely possible.

We need to collaborate closely with the industry on that for the work to move forward. It goes back to the balance that we are trying to strike. We have legal obligations; if we know that a stock is in trouble, we are legally obligated to take action to try to prevent that. However, we are cognisant of the need to balance that obligation against all the other factors that are set out in the Fisheries Act 2020 and the socioeconomic impact.

I believe that the position that we have set out will help us to move forward in a positive and constructive way and to fill the evidence gaps that we know exist, so that everyone around this table has a clearer picture of exactly what the situation is and how we can best move forward and make progress.

10:30

Tim Eagle: I have a quick question on the back of the one that Emma Harper asked about what might happen if the SSI is annulled. I think that I am right in saying that, originally, it was a voluntary scheme. Therefore, if what is proposed in the SSI were not to progress, work could still be done with the local fishermen in the immediate term. There could be a voluntary closure while you developed a new SSI and a new programme that might receive a better consultation response.

Mairi Gougeon: A voluntary closure would not meet our legal obligations under the Fisheries Act 2020.

You made an important point when you touched on the consultation. The committee has heard a lot of evidence, and we have seen the views that were expressed in the consultation, which were mixed. I do not think that there is a shared view of what an alternative would look like. I appreciate that we are in a black or white situation. We have set out what will happen if the order proceeds. If it were annulled, that would open the area to fishing. That

is the situation that we would be in. We would not have a closed area in an area where we know that the stock is in trouble.

That is why we must take the precautionary approach that we have set out, which I hope that the committee will be supportive of. If there are alternative suggestions, I am more than happy to hear them. However, from what I can see, the evidence is very mixed. Given how polarised the views are, it would be difficult to know what the next steps would be.

The Convener: Can you explain why, without a closure, you would not be meeting the fisheries objectives under the Fisheries Act 2020, which you have just mentioned?

Mairi Gougeon: In effect, we would be failing to take any remedial action even though we knew that a stock was in trouble.

The Convener: The objectives require fisheries to be managed in such a way that stocks are restored and maintained at sustainable levels. However, the SSI will not materially reduce the main source of fishing mortality for cod or introduce any bycatch reduction measures, so it will not do anything to help to meet those objectives.

Mairi Gougeon: I believe that it will help to meet those objectives. I am happy to set that out in more detail to the committee. I think that the SSI meets the sustainability, precautionary, scientific, ecosystem and bycatch objectives.

The Convener: It does not, because it does not introduce any bycatch reduction measures. The closure is based on disturbance of spawning, of which there is no evidence at all, so, if you did not implement a closure, you could not be challenged on that ground.

Mairi Gougeon: Let us look at the sustainability objective. We know that the stock is at a low level and that cod mortality is too high. If we removed any protections, we would be doing nothing to mitigate that. The seasonal closure will at least offer some protection while we are working towards longer-term recovery.

The Convener: But you cannot set out what protection the closure will bring. That is the problem. What benefits will it bring?

Mairi Gougeon: The protection will come from the fact that there will not be the same fishing pressure.

Emma Harper: I want to follow up on Tim Eagle's original question. Witnesses reported that vessel sales were down and businesses were closing and that there was reduced harbour activity in Maidens, Girvan and Campbeltown. We know about depopulation and the challenges that rural communities face. You have touched on the need for engagement to ensure that we strike a balance in rural communities. Will you work directly with folks in Girvan, Maidens and Campbeltown on that?

Mairi Gougeon: We are conscious of all those issues. I do not think that any of us around the table come into this job to make people's lives worse. Regardless of our political perspectives, we are trying to improve things for people more generally.

I completely understand the impact that the closure has had. The committee has heard directly from people about that, as have I. As I have said, the measures that we have introduced are all about trying to strike the balance that you mentioned, bearing in mind the broader impact that such measures can have on communities.

It is important to recognise that there are broader issues that are having an impact on our fishing industry. I mentioned fuel costs. In addition, there are shortages when it comes to getting people to work on vessels, which can be a significant factor.

However, I recognise that the closure is part of the picture. I emphasise that I never take such decisions lightly—whether the one that we are discussing today or any decision that I have to make in my role as a minister—because I know that they have broader impacts. It is a question of striking a balance while meeting our legal objectives. That is why we have set out the order in the way that we have and are proposing the measures that we are.

Emma Harper: A new SSI could not be prepared in the remainder of this parliamentary session, could it?

Mairi Gougeon: We could not do that. I do not know what the alternative would be. Given the work that has gone into preparing this order, including the consultation and the impact assessments, it would simply not be possible to do that work again and bring back something else.

Rhoda Grant: As you know, the committee listened to testimony about the personal impact of the closure, including deteriorating mental health and boats being put out of business. We have no evidence whatsoever that the SSI will make any difference, and this is not the first time that the committee has contested such an SSI. There has been time to do the science, but there is not a jot of evidence that the SSI will make a blind bit of difference to anything that is going on. Given the distress that is being caused, how are those effects being considered? How are we gauging the wellbeing and financial effects while we make little or no progress in protecting fish stocks?

Single-handed vessels are working in this area, but we have been told that those fishers cannot be involved in the scientific project, so they will have to stop work for no good reason while the research continues. How will you support them?

Mairi Gougeon: We have mechanisms to allow single-handed vessels to take part. Although we cannot get observers on board those vessels, REM will ensure that they can take part, so it is not the case that they cannot take part.

I emphasise the points that I have made previously. I absolutely appreciate the impact that the measures have had on people. The committee has heard directly about the impact, as have my officials and I through the engagement that we have undertaken. We have tried as best we can to gather information about the impacts of the measures through the consultation and impact assessments that we have undertaken, so we are very cognisant of them. We need to balance meeting our legal obligations and considering the wider impacts, especially the social and economic impacts, on our fishermen.

Rhoda Grant: This is incredibly concerning, because we do not think that the SSI will make a jot of difference. Will the cost of REM be met by the scientific trial, or will it fall on the boats themselves?

Mairi Gougeon: We will provide that equipment, so the vessels will not have to pay for it.

Ariane Burgess: I heard what you said to my colleague about not being able to bring back another SSI immediately. However, as I understand it, our legal obligations will require whoever is in post after the election to address the problem urgently and find a better solution. The bycatch from a nephrops trawl is the issue that has been held up brightly in our evidence sessions and in the letters that we receive. I want to clarify that the Government's legal constraints mean that something will have to be done, starting on 10 or 11 May, to address the bycatch issue. If the SSI is annulled, we cannot just drop the issue—we have to do something.

Mairi Gougeon: The closure period would have passed, because the closure is meant to start at the end of this week. I would have to take further advice on the matter, but, ultimately, that would mean that the area would be open to fishing.

As we discussed earlier, we do not have the most up-to-date information on bycatch, and we need to look at the fleet as a whole. We recognise that we have a really good model, but there are uncertainties in it. We need the scientific programme to fill those gaps so that we can base decisions from here on in on the best available evidence.

Ariane Burgess: So, if the order were to be annulled, fishing would happen. Given that the TSP has already been thought through and planned, could there be an opportunity to use it to look at what happens when fishing happens? Could that be a starting point?

Mairi Gougeon: That sort of thing would be entirely voluntary, and I do not know whether we could get everyone to agree to it. As I outlined to Tim Eagle, some voluntary measures might not be enough to satisfy our legal obligations in that regard.

Tim Eagle: I just want to come back on that, and I hope that you can help me pick this up. We have quite a lot of papers in front of us from experts who are questioning the SSI a lot, and the points that they are making fall in with other things that we have been hearing from various stakeholders. My understanding is that the cod stock that we are talking about is not particularly significant in terms of other cod stocks. Is that your understanding, too?

Mairi Gougeon: I am sorry. Do you mean in terms of the overall—

Tim Eagle: In terms of the cod stocks in other locations, yes.

Mairi Gougeon: Coby, can you respond to that?

Dr Needle: How do you define "significant"?

Tim Eagle: Well, that is a very good question. How should I define "significant"? I guess that what I am trying to get at is that the prawns are very significant here, are they not? Why are we putting in place measures that are going to affect that industry? Does that make sense? I do not know whether what I am saying is coming across to you.

Dr Needle: The International Council for the Exploration of the Sea carried out the original stock identification work in, I think, 2022, looking at the separation of the west coast and the North Sea. The conclusion of the west coast part of that work was that there was strong evidence that the Clyde cod stock was genetically, or certainly functionally, distinct. Professor Heath said at the committee's stakeholder session that, according to the tagging data for the Clyde, fish tagged in the Clyde will be caught in the Clyde. They do not go elsewhere, and you do not tend to get cod coming into the Clyde from outside. Therefore, it is a discrete, isolated population.

Is the decision whether that is worth maintaining a societal one? I think that it is. I would argue that this is unique cod population that has been there for thousands of years. I take your point that, commercially speaking, nephrops would be more important than cod in that area, but I do not think

that that means that we do not have an obligation to try to protect that cod stock.

Tim Eagle: I am not suggesting that that is exactly my view—I am just questioning the position. We have a sustainable fishing industry in the area, which is very important; we have measures that have been in place for nearly two decades now but that have not really worked at all; and we have a lot of people questioning the order in front of us. I just want to understand, finally, why we are persisting with this.

Mairi Gougeon: The advice that I have been given and the broader scientific consensus—Coby Needle can correct me if I am wrong—are that stock recovery is possible. That is the belief at the moment.

Tim Eagle: But not with the order in front of us.

Mairi Gougeon: We are trying to keep the minimum protections in place, at least, to allow us to do the work while we fill the evidence gaps.

Dr Needle: It is very difficult, with a stock that is in the poor state that we think Clyde cod is in at the moment, to remove protections in a justified way.

Tim Eagle: Okay.

The Convener: I have real concerns about that. Your policy justification for the order is that, although the evidence does not show that something is not a problem, it also does not show that it is. I find that rather strange, and it sets a rather sinister precedent if Government is justifying policy on the basis of evidence that does not actually exist. I have concerns about that.

Beatrice Wishart: Cabinet secretary, you have referred to other vessels coming in. What if there is no closure in place? What evidence is there outwith the closure period of vessels coming in? I do not have any idea of what we are talking about in that respect.

Mairi Gougeon: Do you mean other vessels fishing in the area?

Beatrice Wishart: Yes.

Mairi Gougeon: I will ask Jim Watson to come in on that.

Jim Watson: One of the elements of the order is, as I have said, the introduction of an access restriction to vessels with a track record. The basics of how we manage fisheries are that, if you have a licence, you can, in theory, subject to some local restrictions, fish anywhere in Scotland or, indeed, anywhere around the UK. For example, the Clyde has historically been important for the Northern Irish fleet, though less so now than it has been in the past.

There is nothing in theory to stop a number of visiting vessels coming round and working in the Clyde, targeting specific species such as nephrops if it is attractive and profitable for them to do so—hence the additional measure that we are putting in place to limit that access. It is to prevent that sort of thing from happening and to respect and protect the science programme.

10:45

Beatrice Wishart: I am not sure that I understand. I do not think that that answers my question. I am trying to understand how many vessels there might be. Do you know the quantity of vessels that could come in, or are you saying that these are open seas and that anybody could come in? Is that it?

Jim Watson: If we are talking not about the whole Clyde but about the specific cod boxes that are referred to, there are vessel numbers in the BRIA. There are about 50 vessels in total, which are a mix of trawl and creel vessels. Without the protection, in theory you could have the whole Scottish or UK fleet coming around and fishing the Clyde. That is not going to happen, of course, but in theory it could. Without this restriction in place, there is nothing preventing them from doing that.

Ariane Burgess: If the order were annulled after a recommendation today, could something be brought back at the beginning of the next parliamentary session? Also, could we treat this as a one-year initiative and bring an order back, while, in the meantime, looking for something better that could start in the new session?

Mairi Gougeon: I do not know whether that would be possible for me to do. I cannot make any commitments in relation to that today.

The Convener: That concludes our questions.

We move to the formal consideration of the motion to recommend that the Parliament annul the instrument. I invite Tim Eagle to speak to and move motion S6M-20686.

Tim Eagle: When I came in this morning, I was slightly joking when I said that I had only a 30-second speech. It has got slightly longer over the course of the morning. I will read through what I have got and I hope that it will make sense of why I will move the motion to recommend that the order be annulled.

I lodged the motion to recommend that the Parliament annul the order after reflection and a round-table discussion that we had with many stakeholders. Even following this morning's evidence session, I do not believe that the Government has made a sufficiently strong or balanced case for proceeding in the way

proposed. It seems to almost everyone that there is a misalignment between what is being proposed and the reality on the ground.

Like many, I support sustainable fisheries: healthy stock and healthy coastal communities must go together, and I want our fishing communities to thrive. However, it feels as though the question that the fishermen, the local community and environmental groups are asking us is not whether we are acting, but whether we are acting in the right way and on the right evidence. After so many years of the cod box being in place, I can see why those involved are asking that.

The committee heard a wide range of views from scientists, industry representatives and local stakeholders. That evidence was not settled, but there was credible concern about the precision of the data, about how well the measures match actual stock behaviour and about the real-world impacts on those who make their living at sea. The consultation responses reflected that same picture: there was support for protecting stocks but no clear consensus that the current approach is the correct or proportionate one. Many respondents questioned the design, the timing and the likely effectiveness of the closure and asked for a more collaborative and adaptive approach. That is why the Government should pause and think again, and that is why I have lodged the motion recommending annulment.

During the debate, Rhoda Grant mentioned guarantees for the committee should anything change or new measures be imposed, if the order goes through successfully. I would make the strong argument that the best possible way to develop that argument, given the massive uncertainty that we are seeing across the board from key stakeholders, is to ask the Government to pause now, reflect and move forward afresh. After 20 years or so, that seems a fair thing to do.

I find it telling that, in the past few weeks, members of the committee have found ourselves in two similar situations with two instruments: the SSI on producer organisations in agriculture and this order. While the instruments are very different, in both cases we are effectively being told that we must put them through because of the impacts if we do not. I cannot, in all good faith, continue to sit and vote for things that are widely questioned just because there is a consequence of the Government's making. It is not for me to defend the Government. Although it brings risks, perhaps if we recommend annulment, that will be the kick-start that brings certain change for the better.

I cannot suggest what should happen, but surely the Government needs to bring the key groups—fishers, scientists, conservation bodies and local communities—around the table again to agree a forward plan that is transparent, evidence led and workable on the ground. Better co-design will lead to better compliance and, I hope, to better outcomes. No one is saying that that will be easy—I take on board what the cabinet secretary has said about that today—but everything is possible with the right approach.

If others were to feel that they could support the motion, I would make a strong plea that a year-on-year situation cannot be left as a fight between differing parties campaigning for radical measures or changes, or as a fight for the use of the Clyde as a media example.

People's livelihoods depend on the area, and communities can be radically changed by the proposals. Any discussions must be balanced and fair for those who live and work in the area. I am aware that the Clyde Fishermen's Association is ready, and has always been, to work with the Government and all partners in a fair and open way.

Annulling the order not about stopping progress; it is about getting the policy right and moving forward. With that, I urge others to join me in voting for the motion.

I move,

That the Rural Affairs and Islands Committee recommends that the Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2026 (SSI 2026/10) be annulled.

Ariane Burgess: This morning's discussion has been very useful. I am aware that if the order were to be annulled, that would mean that, for a period of time, there would be no restriction in place to protect the Clyde cod. However, I am leaning towards voting for the motion, because, as we heard during the stakeholder evidence session two weeks ago, the restrictions that have been in place for years have not protected that unique species of cod. The order promises more of the same for three years.

It was good to hear the detail of the various bits and pieces of what is being proposed, supposedly in the name of science—despite the fact that we already have perfectly good scientific evidence that clearly shows that the Clyde cod is in decline and will continue to be in decline should the measures remain in place.

The evidence that has been collected by Professor Mike Heath and his team at the University of Strathclyde has been peer reviewed and independently modelled, and it should be the basis of Government decisions that are made on the issue. The evidence clearly shows that mortality is the principal issue behind Clyde cod's decline, and the most likely reason for that mortality, the evidence says, is that the cod is

appearing as bycatch in the nephrops trawl fishery. To put it more bluntly, trawlers are killing off the species.

If we want to properly protect Clyde cod and give it a chance of regenerating, common sense dictates that we need better controls over trawling in the Firth of Clyde. If we vote for the motion today, I would like the Government to come back before disillusion—I mean dissolution; I hope that it is not disillusioned—with a proposal for a one-year protection measure. I appreciate that the timescales would be tight, but the Government needs to carry the can for the situation, given that it brought the order before us at the last minute. There is food for thought here: we have been talking about the order only a few weeks before the time when the closures would come in. It would be far better if we were having these conversations in September, October or November.

One damaging year would be significantly better than three damaging years. Even if the order cannot be brought back in time for dissolution, one year of no restrictions would be vastly better than three years of restrictions that do not work anyway. Given our discussion of there being a legal requirement for the Government to act on the matter, I trust that there is an impetus to continue the work.

A year should provide enough time for fishers, officials, scientists and other organisations to get together to work out a better way of protecting Clyde cod. There are plenty of options for the working group to consider. The extreme scenario would involve banning all trawls in the Firth of Clyde during the spawning season. More amenable options could include the creation of static gear reserves during the spawning season, as that would greatly reduce bycatch, or a requirement for trawlers to use adaptation. We heard about that, but I did not feel confident that the Government's marine directorate has an understanding of what gear is being used, such as the Swedish grid. By getting everyone around the table, the Government can work out what the impacts on Clyde cod will be for each measure, and it can balance them against the socioeconomic impact of restricting fishing in the Firth of Clyde. I am inclined at this point to support the call to recommend that the order be annulled.

Mairi Gougeon: A lot has been discussed today, and the committee has taken an awful lot of evidence in relation to the order. I would like to cover a few points in closing. Ultimately, we are trying to strike the right balance. We are taking measured and proportionate steps that strike a balance between meeting our legal obligations, protecting the stocks that we know to be vulnerable and considering the wider socioeconomic impacts of any decisions that we take.

Tim Eagle and Ariane Burgess have touched on the importance of collaboration—the wider piece—and I believe that we are addressing that. I believe that the science programme that we have developed has that collaboration—that is exactly what it has been about. It is about working with our fishermen and scientists to fill the evidence gaps in the models.

Ariane Burgess: I hear the point about collaboration, but we have heard from many stakeholders who clearly do not want the order. We have heard that from all forms of stakeholders—it is a 360° view. It is clear that some people do not feel that they are fully involved and engaged in that collaboration. I have observed over time that, with the Government, collaboration sometimes starts to happen once it has already made up its mind. A more inclusive co-design and co-production process needs to start much earlier.

Mairi Gougeon: You made the criticism that we are discussing the order late in the day. That is because of all the detailed work that has gone into producing it. It has involved extensive engagement, consultation and work.

The Convener: Again, I am confused. We often hear that point—we have heard it in relation to agriculture policy, when we consider instruments at the end of the process and the minister says that there has been extensive consultation. We had a round-table session with scientists and other stakeholders. If I had asked for a show of hands of those who supported the order, I am sure that we would have had unanimous agreement that this is not the instrument that they want. In the past, there have been voluntary schemes, which shows that the sector and the NGOs want to work together to get a sustainable fishery in the Clyde.

You say that there has been all this negotiation but, despite that, we have arrived at a point at which it appears that no stakeholders support the order, either because it does not go far enough or because it damages fishing interests, although those actually have little impact on the cod population. The co-design and co-development have not worked. Otherwise, we would not be sitting here, discussing the order, as it would have gone ahead without a motion to annul.

Mairi Gougeon: Ensuring that we are working collaboratively with industry does not necessarily mean that we will get 100 per cent of our stakeholders on board. That will not always be possible, particularly in this space, because of the diverse and polarised views that exist. You have seen and heard that directly, and you have received evidence on it.

I want to go back to the point that Ariane Burgess made about having a one-year instrument. My concern about that is that we would get into a cycle of preparing for another one-year instrument, which would then interrupt the scientific work that otherwise could take place of trying to build the wider picture and fill some of the evidence gaps that exist.

The Strathclyde model, which the committee has heard about, is excellent, as Coby Needle outlined. However, we know that there are data gaps in it and that it is not up to date, which is exactly why we want to work with our scientific advisers and our fishermen to fill those gaps. Ultimately, through the scientific programme and the closed period, there would be limited access. As Jim Watson highlighted, we have had engagement with the industry on that, and the fishermen are at least broadly content with it, as far as I understand.

We will not be sitting still for three years—that is not what the order is about. It is about adaptive management and learning as we go, not least through looking at some of the improvements that will develop in that time, such as those that will come through the future catching policy, which we have discussed at length.

I urge members not to vote for the motion. If the order were annulled, it would open the area and mean that we would not have any closure in place at a time when we know that the stock is particularly vulnerable. The best way forward is to maintain the proportionate precautionary measures, keep the closure in place, engage in the science programme and cap the access, so that, when we are sitting round this table in the future—I will not be here, but some committee members potentially will be—we are working from as strong an evidence base as possible to inform the management measures.

The Convener: I call Tim Eagle to wind up.

Tim Eagle: I do not have much more to say. I appreciate what the cabinet secretary says—I really do. This is not an easy decision for any of us, and we all want the best for the region, but I stand by what I have said. I think that Ariane Burgess is right, and you always know that something is wrong when the Greens and the Conservatives start coming together. There is an issue. Whether we consider the expert advice or advice from people on the ground, there is clearly an issue. The order is clearly not the right approach.

The Convener: The question is, that motion S6M-20686 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Burgess, Ariane (Highlands and Islands) (Green)
Carson, Finlay (Galloway and West Dumfries) (Con)
Eagle, Tim (Highlands and Islands) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Tweed, Evelyn (Stirling) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Motion agreed to,

That the Rural Affairs and Islands Committee recommends that the Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2026 (SSI 2026/10) be annulled.

The Convener: The committee will report on the instrument. Do members agree to delegate authority to me as the convener to finalise that report for publication?

Members *indicated agreement*.

The Convener: That completes consideration of this negative instrument. I suspend the meeting for 10 minutes to allow for a comfort break and a changeover of witnesses.

11:00

Meeting suspended.

11:09

On resuming—

Crofting and Scottish Land Court Bill: Stage 2

The Convener: Our next agenda item is consideration of the Crofting and Scottish Land Court Bill at stage 2. I welcome Jim Fairlie, the Minister for Agriculture and Connectivity, who is supported by colleagues from the Scottish Government.

Today, we have three members who are participating remotely. I will briefly explain the procedure for hybrid stage 2 proceedings. If we lose connection at any time, I will suspend the meeting. Emma Roddick, Rhoda Grant and Alasdair Allan's cameras should be kept on at all times and, when voting on amendments, they should raise their hands at the appropriate time.

Schedule 1—The Scottish Land Court

The Convener: Amendment 156, in the name of Ariane Burgess, is grouped with amendments 102 to 105, 107 to 109, 112 to 114, 118, 119, 122 to 124 and 129.

Ariane Burgess: Amendment 156 was drafted in collaboration with the Ramblers Association. It would require the Government to have regard to the knowledge and experience of members who it appoints to the newly merged Scottish Land Court. I appreciate the constructive discussions that the Government had with me ahead of stage 2. Specifically, amendment 156 proposes that consideration should be given to including as members of the court people who have experience and knowledge of land access matters in rural and urban settings. I believe that we can all agree that that would be in the interests of everyone who interacts with the court. We must ensure that everyone who brings or defends a land access case receives the best justice possible.

Amendment 156 would ensure that there is consistency, efficiency and specialist handling of access disputes, particularly when land management and public rights interact. Access cases often involve a nuanced interpretation of the Scottish outdoor access code and land use practices, and a dedicated forum that is overseen by people with the right expertise will offer better informed outcomes than a generalist sheriff court.

As I said, I have spoken to the minister about the amendment, and I understand that a less specific mechanism is in place that allows for the right expertise to be put in place. However, I want to ensure that there are routes that stakeholders and other interested parties can take to ensure that any knowledge gaps in the Land Court are addressed. If the minister can reassure me on that, I will be content not to press amendment 156.

I move amendment 156.

The Convener: I invite the minister to speak to amendment 102 and other amendments in the group.

The Minister for Agriculture and Connectivity (Jim Fairlie): First, I will address Ariane Burgess's amendment 156. As the bill transfers certain access rights matters to the Land Court, I recognise that such experience may be relevant to parts of its future work. However, the court's jurisdiction is broad and covers crofting, land, valuation and agricultural holdings, and, under the bill, it will also cover the functions of the Lands Tribunal for Scotland.

To operate effectively, the court needs to have a balanced membership consisting of members who have been selected on merit from a wide range of backgrounds. The judicial appointments process is already designed to assess the full range of skills and experience that candidates bring and to ensure that they are capable of handling all the court's work. If it is considered desirable to reflect particular experience, ministers will have the powers to do that by making eligibility regulations. That is the proper route for bringing in specific experience where it is needed.

Although I understand the member's intention, for the reasons that I have set out, I invite Ms Burgess not to press amendment 156. If she does, I ask members not to support it.

I turn to the remaining amendments in the group. Amendments 102 to 105 will strengthen the provisions on eligibility for appointment as deputy chair of the court. They provide a clear and flexible approach that will allow the role to be filled whenever it is required, including when the chair of the court is unable to act and no eligible existing member can be designated to take on the role.

To maintain consistency with the rigorous appointments process, the amendments also provide that the Scottish ministers may appoint a non-member as deputy chair only when no current member is eligible, and only when the individual has already been through the Judicial Appointments Board for Scotland's recruitment process and has been appointed. The appointment is temporary and must be agreed to by the Lord President.

The Convener: Minister, could you pause for a moment and adjust your microphone?

Jim Fairlie: Apologies. Is that better?

The Convener: That is fine.

Jim Fairlie: Amendments 102 to 105 will allow the Scottish ministers to temporarily appoint a deputy chair from a broader group within the Scottish judiciary—namely, sheriffs and sheriffs principal who have at least 10 years of experience.

I encourage members to support amendments 102 to 105.

11:15

I turn to amendments 107 to 109, 112 to 114 and 122 to 124. These amendments, which have been lodged following feedback, will improve the approach to reviews and appeals when the two bodies are merged, with the ability to update it in future when necessary. The Scottish Land Court and the Lands Tribunal for Scotland currently operate with different review and appeal structures. This package of amendments will also streamline how internal reviews will operate, ensuring that the right members deal with them and that the court is not drawn into unnecessary or duplicate stages.

Together, amendments 107, 112 and 124 will create a coherent mechanism for updating the new court's internal review and appeal arrangements. In particular, they provide a mechanism for dealing with the review and appeal of cases under the transferred Lands Tribunal jurisdiction, so that the wider set of reforms operates coherently and there is flexibility to ensure that bespoke arrangements can be made as required.

Amendment 112 will give the Scottish ministers a power—to be exercised by affirmative regulations—to specify which matters are not subject to internal review by the court and to adjust how cases are appealed to the Court of Session. Importantly, any such changes cannot be made unless ministers have formally consulted the Lord President and the chair of the court. Building in that requirement will provide judicial oversight and help to ensure that any future procedural reforms are proportionate, workable and consistent with the wider justice system, thereby strengthening the safeguards around the new flexibility.

For those reasons, I ask members to support all those amendments.

Amendments 118 and 119 will make a small but important adjustment to the rule-making process by requiring the Scottish Civil Justice Council and the Court of Session to consult the chair of the Scottish Land Court when preparing the procedural rules for that court. That will ensure that the specialist nature of the Land Court's work is recognised and reflected in the development of those rules. For that reason, I ask members to support amendments 118 and 119.

Finally, amendment 129 concerns the appointment of members to the Scottish Land Court. The Judicial Appointments Board for Scotland—JABS—is responsible for recommending individuals for judicial office. Its role is to support an open and transparent judicial appointments process in Scotland. Amendment 129 will provide for the involvement of the Scottish Land Court in appointments made by JABS. It will mean that, when the board is considering an appointment to the court, at least one member of the Land Court will take part in those proceedings, with that member being selected by the chair of the court after the board's chairing member has been consulted.

That mirrors the established Scottish tribunal appointments process, in which the relevant body's specialist knowledge is built into the board's consideration. That will ensure that the particular experience of the Land Court is available to the board when required. For that reason, I ask members to support amendment 129.

The Convener: I invite Ariane Burgess to wind up and to press or withdraw amendment 156.

Ariane Burgess: I have nothing further to add. I wish to withdraw the amendment.

Amendment 156, by agreement, withdrawn.

Amendments 102 to 115 moved—[Jim Fairlie]—and agreed to.

The Convener: Amendment 116, in the name of the minister, is grouped with amendments 157, 117, 158, 159, 214 and 160 to 165.

Jim Fairlie: Amendments 116 and 117 are technical amendments that follow the enactment of the Land Reform (Scotland) Act 2025. They will update the bill so that the Scottish Land Court's jurisdiction correctly reflects the Small Landholders (Scotland) Acts 1886 to 1931 and the small landholdings provisions in schedule 2 to the 2025 act. I encourage members to support them.

Amendment 157, in the name of Ariane Burgess, seeks to expand the competence and jurisdiction of the Scottish Land Court to include a wide range of environmental matters. I acknowledge that the Scottish Government has indicated that consideration will be given to the expanded Land Court taking on new functions in relation to cases that arise under the Aarhus convention at a future point, but we have intentionally not sought to do so at this time. I will explain why.

First, the merger of the Scottish Land Court and the Lands Tribunal for Scotland will take time to complete. It will require the development of a new set of court rules, the introduction of a new case management system and the transfer of staff and

members. Adding such a substantial new set of responsibilities at the same time could have a serious impact on the effectiveness of the new court. Such a significant change would merit a specific consultation process with all stakeholders before a decision is made.

Secondly, we do not consider it appropriate for the expanded Land Court to take on the functions of a criminal environmental court, given the distinct procedural and institutional requirements of criminal proceedings. Such cases are appropriately considered in the sheriff court or the High Court, where there is already considerable judicial knowledge and experience.

Thirdly, although we acknowledge the calls from a range of stakeholders for improvements to access to justice on environmental matters, we have already made progress in that regard through the abolition of court fees for Aarhus cases in the Court of Session and the introduction of protective expenses orders—PEOs—to limit legal costs. I note that the Scottish Civil Justice Council has agreed to hold a wide-ranging consultation this year on extending the availability of environmental PEOs, including to all relevant cases in the sheriff court and the sheriff appeal court.

The Scottish Government's present position is that most environmental law matters can be dealt with effectively by the current civil courts and processes.

Finally, the bill allows for future extension of the competence and jurisdiction of the Land Court if and when such an extension is the right thing to do. That will ensure that a controlled and proportionate approach is taken that avoids overwhelming the newly merged court. In line with the committee's recommendation in its stage 1 report, the Parliament will be able to give careful scrutiny to any such proposal, because regulations to make any change will be subject to the affirmative procedure.

Amendments 164 and 165, in the name of Ariane Burgess, are consequential to amendment 157, which would expand the competence and jurisdiction of the Scottish Land Court to include a wide range of environmental matters.

Amendment 164 concerns certain provisions of the Environmental Protection Act 1990. Statutory nuisance cases are heard in sheriff courts because they need to be dealt with quickly, locally and by courts that have long-established expertise in that type of work. Moving them into the national court could significantly weaken accessibility and, in practice, would require the Land Court to acquire physical court spaces and facilities right across Scotland, potentially driving up capital expenditure at a time when we are focused on controlling public spending.

Amendment 165 would expand the competence and jurisdiction of the court to include all matters under the Town and Country Planning (Scotland) Act 1997. The Court of Session exercises Scotland's supervisory jurisdiction, and it is the established forum for questioning the legality of planning decisions. I want to be absolutely clear that the Court of Session is where such a statutory planning challenge properly belongs. That function does not sit naturally with the history, expertise or purpose of the Scottish Land Court, which has always been a specialist forum for crofting, agricultural holdings and rural land matters. Diverting planning challenges would fundamentally change the nature and character of the Land Court, which I have committed to preserving through the bill.

Although the likely increase in case volume arising from amendments 164, 165 and 157 is unknown, the Scottish Courts and Tribunals Service considers that the expansion of the court's jurisdiction would have significant operational and financial impacts, and any such change would benefit from proper consultation before a decision was taken.

The Scottish Government's position is that it does not see a compelling argument at this time for the creation of a special environmental court in Scotland or for expanding the competence and jurisdiction of the Scottish Land Court in the way that amendments 164 and 165 propose. I acknowledge Ariane Burgess's reasons for lodging the amendments, but, for the reasons that I have just explained, I ask her not to move them.

Amendment 158, in the name of Ariane Burgess, seeks to prevent the award of expenses against a person who raises any "environmental rights action" or any subsequent appeal. I understand that the intention is to seek to protect someone who raises an action from having to pay the legal expenses of the other party, which could be substantial if the action was unsuccessful. However, it is not clear from the amendment what constitutes an "environmental rights action", as no definition is proposed. As a consequence, it is a very expansive provision, which, when read in conjunction with amendment 157, may be liable to have unintended consequences. Environmental cases cover a very wide range—everything from lower-value nuisance disputes in the sheriff court through to complex judicial reviews in the Court of Session. Applying automatic cost protection across that whole spectrum would carry major risks.

Separately from that, it is important to recognise that the Scottish Government has already taken meaningful steps to address concerns about the costs to individuals who seek access to justice on environmental matters. As with amendment 157, I

note that the Scottish Civil Justice Council intends to consult this year on extending the availability of environmental protective expenses orders to a significantly wider range of environmental cases. That includes the proposal that, if a PEO is granted, the maximum cap will be £5,000, although the court would retain judicial discretion to lower that figure. The Scottish Government is keen to allow the SCJC to complete its work in that area before considering whether any other reform is required. On that basis, I ask Ariane Burgess not to move amendment 158.

Amendment 159 seeks to include a definition of the Aarhus convention in the bill. I have argued against Ariane Burgess's amendments 157 and 158, which would give rise to the need for a definition, so I ask her not to move amendment 159.

On amendment 214, in the name of Tim Eagle, I am not opposed in principle to holding a review of the effectiveness of the merger of the Scottish Land Court and the Lands Tribunal for Scotland. However, I need to be clear about two fundamental principles, on which we must not compromise, before we go any further.

The first of those principles is that of judicial independence. Ministers cannot and must not be drawn into commenting on judicial deployment, expertise or decision making. The second principle is that of the independence of the Scottish Courts and Tribunals Service. The Scottish ministers do not oversee the performance of the SCTS, which is accountable directly to the Parliament.

Therefore, it is essential that any review that we put into statute respects those boundaries. It is also worth noting that some of the information that the amendment seeks is already available through existing SCTS and judicial reporting, including annual accounts, operational costs, case-load data, waiting times and annual judicial business reports.

Tim Eagle: I am pretty easy about what is proposed in amendment 214. I have asked for reviews of primary legislation before. I know that it is not always helpful or necessary to provide for such reviews, and I am not necessarily sure that it is in this case. With amendment 214, I was simply seeking to highlight concerns that were raised when we discussed the issue during the evidence taking at stage 1, so I will be happy not to move it. However, I would like the minister to recognise that there could be difficulties and to guarantee that the effectiveness of the merger will be monitored.

Jim Fairlie: I would be happy to speak to Tim Eagle ahead of stage 3, because there is the potential to lodge an amendment that would do the very thing that he seeks to do.

I will speak to Ariane Burgess's amendment 160, which has similarities with amendment 214. I will get through my notes and we can take it from there.

Amendment 160, in the name of Ariane Burgess, would require the Scottish ministers to update the existing statutory guidance

"given under section 27 of the Land Reform (Scotland) Act 2003",

following the transfer of the matters of jurisdiction outlined in paragraph 16 of schedule 1, which relates to access rights, from the sheriff court to the Scottish Land Court.

The Scottish Government recognises that, following the commencement of part 2 of the bill, there will be a requirement to update the guidance in order to inform local authorities about the extended competence and jurisdiction of the Land Court with regard to access rights. We would undertake that work as a matter of course and as part of the routine practice of revising guidance whenever relevant statutory changes arise. However, there might be merit in explicitly setting that out in the bill in order to clarify the Scottish Government's intention to revise the guidance following commencement and to reassure stakeholders—especially local authorities—that updated information will be provided to reflect the extended competence and jurisdiction of the Land Court in relation to access rights.

That said, we do not consider that amendment 160 would have the effect that Ariane Burgess intends, given the link to the coming into force of section 35. It is possible that paragraph 16 of schedule 1 will not be commenced—or not commenced in full—at the same time as section 35. However, we are willing to support the amendment at stage 3 if the member works with us to amend the drafting errors.

Amendment 161, in the name of Ariane Burgess, would require that a review be undertaken, after a three-year period, of the impact on the Land Court of the extension of its competence and jurisdiction to matters relating to access rights. Having undertaken such a review, the Scottish ministers would need to

"publish and lay a report before the Scottish Parliament".

As with amendment 160, we do not consider that amendment 161 would have the effect that Ariane Burgess intends, given the link to the coming into force of section 35. Again, we are willing to work with her to bring forward a workable alternative for a review at stage 3, so I invite her not to move amendment 161.

11:30

Amendment 162, in the name of Ariane Burgess, would require the Scottish ministers to establish an expert working group to review the environmental jurisdiction of the court no later than six months after royal assent. That amendment could be considered to be in conflict with amendment 157, also from Ariane Burgess, which would expand the competence and jurisdiction of the Scottish Land Court to include a wide range of environmental matters from the date of commencement of section 75. I presume that the amendments present alternative approaches. I look forward to hearing what Ariane Burgess says about that in her remarks.

As I have already explained, there is some interaction between amendment 162 and Tim Eagle's amendment 214, which seeks a review of the effectiveness of the merger of the court and the tribunal at defined intervals. The proposal to review the jurisdiction of the court with particular reference to environmental matters is, in principle, something that the Government is willing to consider. However, we consider that the way in which the amendment is framed raises a number of significant practical and legal issues. First, we consider that the commencement of a review within six months of royal assent is too soon. The merger of the Scottish Land Court and the Lands Tribunal for Scotland will not have taken place at that point, and no experience will have been gained from the operation of the new court.

From a legal perspective, we are not aware of any legislation that has previously required ministers to establish an expert working group such as that, and the state of such a group in law would therefore be unclear. That might be particularly significant if the group did not deliver on its objectives. The new court's environmental jurisdiction is not defined, and if amendment 157, in the name of Ariane Burgess, is not agreed to, the meaning of the amendment would be uncertain.

Finally, although the proposed membership of the expert working group appears to be broad in representation, it omits representation from the court itself. Furthermore, there may be other stakeholder groups that are not specified, such as local authorities and trade unions, that would have important contributions to make to any review of the court's competence and jurisdiction. It would also likely cut across the work of the Scottish Civil Justice Council, which has the statutory function of keeping the civil justice system under review and is in the process of reviewing access to justice for environmental actions.

In conclusion, the Scottish Government's position is that amendment 162 would not deliver the outcomes that I think Ariane Burgess is looking for. For that reason, I invite her not to move amendment 162 and instead to engage further to consider an alternative approach in advance of stage 3.

I move amendment 116.

The Convener: I call Ariane Burgess to speak to amendment 157 and other amendments in the group.

Ariane Burgess: I will begin by saying that we should all be concerned that Scotland is not meeting its international obligations when it comes to people's access to environmental justice. We are currently in breach of the Aarhus convention, which was signed more than 25 years ago, especially article 9, which requires access to environmental justice to be

"fair, equitable, timely and not prohibitively expensive."

I have a sense that we are all believers in fair access to justice, so we need to ensure that we provide such a system for the people of Scotland.

There is a wider point to make about meeting our international obligations, which is about being taken seriously and being trusted on the world stage. We must abide by treaties and other agreements that we have signed up to. Aarhus is an example of such an agreement, which is part of the reason why I view this amendment and the consequential amendments as being of such urgent importance. I appreciate the conversations and discussions that I have had with the minister and officials on the matter ahead of this stage 2 debate.

In the policy memorandum that accompanies the bill, the Scottish Government states that it wants there to be consideration around providing the Scottish Land Court with jurisdiction over environmental cases at some point in the future. I heard the minister say again in his remarks that now is not the time for that, and that it would happen at some point in the future. Although I welcome the fact that the Government did not shy away from the matter in the memorandum, it is beyond time for us to stop taking baby steps on the issue and start taking big strides instead.

Amendment 157, which I have worked on with the Environmental Rights Centre for Scotland, would give the newly merged body jurisdiction over environmental cases. In practice, that would mean that communities would have a clear, low-cost route to bringing cases against a nearby factory that was spewing out nasty emissions, for example. Likewise, a charity could bring an environmental case against the Government without having to find thousands of pounds to fund it. Amendment 157 would bring Scotland into line with many other nations around the world, where land and environmental courts are the norm.

Examples of this combination can be seen in Sweden, Kenya, New South Wales and Australia. The latter is the oldest specialist environmental court in the world, and it has operated successfully since 1980. Providing environmental jurisdiction would also be a big step towards meeting our Aarhus obligations by creating a one-stop shop for such cases.

As we heard during our evidence sessions on the bill, especially the one with Alison Irving, the principal clerk of the Scottish Land Court, from an administrative point of view, nothing prevents us from giving the Land Court that jurisdiction. The only question would be about resourcing. She stated that

"the Land Court already has a number of niche jurisdictions, so it is used to dealing with a range of different pieces of legislation."

Ms Irving added:

"We already deal with appeals against some Scottish Environment Protection Agency decisions."—[*Official Report*, *Rural Affairs and Islands Committee*, 5 November 2025; c 6-7.]

It is therefore not a great leap for us to agree today to give the Land Court environmental jurisdiction. I will say, however, that I take on board yesterday's discussions about the complexity of that.

Another key thing to say about amendment 157 is that I can see a time coming when the number of environmental cases going through the courts will begin to rise. Issues caused by climate and biodiversity are set to become more acute in the near term, and it is highly likely that the demands on our justice system will go up in tandem with that. It is therefore imperative that we begin to develop the relevant expertise in our legal system now, so that we can avoid the public expense and resource that would be required to play catch-up in the future. I appreciated hearing the minister's thoughts in this space.

Amendments 158, 159, 164 and 165 are consequential to amendment 157. Amendment 158 would enable us to meet our Aarhus article 9 obligations in a Land Court that is reformed by amendment 157. It would protect individuals or groups from having to pay the other side's costs in unsuccessful environmental actions. That would create a much more level playing field between those bringing cases, more of whom tend to be charities or communities, and those defending them, who tend to have deep pockets. I take on board the minister's comments about the amendment lacking clarity about what is meant by "environmental rights action" and that the Scottish Government is already taking steps through a consultation or work being done by the Scottish Civil Justice Council on a maximum fine and the ability to lower the fee via judicial discretion. That is welcome.

Amendment 162 is a fallback for amendment 157. It would require ministers to set up a working group consisting of all key stakeholders in the environmental justice space. That working group would look at the feasibility of setting up an environmental court and handing environmental cases to the Scottish Land Court. The Government would then be required to review and release a statement on the group's findings. Such a measure would at least move us away from the Government saying good things about environmental rights but not taking action. It would give the Government the opportunity to communicate what it is already doing.

It would also require the Government to do this in a transparent way, which is what the committee has called for—clarity on scope, resourcing and access to justice impacts, as we set out in our report. I recognise from what the minister said in his contribution that there are drafting issues, and I would appreciate working with him and officials on that ahead of stage 3.

Amendments 160 and 161 relate to land access elements in schedule 1. I appreciate the constructive conversation and discussion ahead of this stage. One of the welcome elements of the Scottish Land Court's part of the bill is that its jurisdiction would include land access cases. In recent years, we have seen several high-profile land access disputes, but translating those disputes from wars of words to the courts system has proven to be a challenge. I believe that the change that the bill will make will go some way towards improving the situation.

I would, however, like to make a few tweaks to ensure that we get the best possible hub for land access justice. Amendment 161, which I worked on with Ramblers, would require the Government to produce a report on the nature and number of land access cases being brought to the Land Court after a period of three years. That is crucial, because it would enable us to identify and rectify any issues that prevent people from bringing those cases and, in turn, build confidence in the newly emerged court's ability to handle land access cases.

Amendment 160 would require ministers to update the access rights guidance that is required under the 2003 act, to ensure that the route that land access disputes should take is clear to all. The amendment would require the updating of guidance that is now more than 20 years old and is not in line with the changes in practice and the law that have occurred in that time. I believe that that measure would have a positive impact on the running of the Land Court when it handles cases.

Again, I appreciate what the minister said about working with him and officials ahead of stage 2 on those two amendments.

The Convener: I call Tim Eagle to speak to amendment 214 and other amendments in the group.

Tim Eagle: I have very little to say on amendment 214. I lodged it on the basis of some concerns that were raised during the committee's evidence sessions, but I heard what the minister said this morning and I will work with him on the matter before stage 3.

The Convener: I call the minister to wind up.

Jim Fairlie: On the points that Ariane Burgess has made, we are committed to compliance with the Aarhus convention and we are already taking forward the range of measures that I set out previously. Further work is under way on the reform of legal aid and the consideration of issues raised by the Aarhus convention compliance committee. Environmental Standards Scotland, which was established under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, provides an accessible alternative route for individuals and organisations to raise concerns about the effective implementation of environmental law, offering a means of resolving issues without the cost and complexity associated with court proceedings.

I fully take on board the concerns that Ariane Burgess has raised, but a lot of work is on-going and I ask her to bear that in mind as we go through the amendments that we have in front of us.

Amendment 116 agreed to.

Amendment 157 not moved.

Amendments 117 to 124 moved—[Jim Fairlie]—and agreed to.

Amendments 158 and 159 not moved.

Schedule 1, as amended, agreed to.

Sections 36 to 39 agreed to.

After section 39

Amendments 214 and 160 to 162 not moved.

Section 40 agreed to.

Schedule 2—Minor and consequential amendments

Amendments 125 and 126 moved—[Jim Fairlie]—and agreed to.

Amendment 163 moved—[Ariane Burgess].

The Convener: The question is, that amendment 163 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
Burgess, Ariane (Highlands and Islands) (Green)
Grant, Rhoda (Highlands and Islands) (Lab)
Harper, Emma (South Scotland) (SNP)
Roddick, Emma (Highlands and Islands) (SNP)
Tweed, Evelyn (Stirling) (SNP)
Wishart, Beatrice (Shetland Islands) (LD)

Against

Carson, Finlay (Galloway and West Dumfries) (Con)
Eagle, Tim (Highlands and Islands) (Con)

The Convener: The result of the division is: For 7, Against 2, Abstentions 0.

Amendment 163 agreed to.

Amendment 127 moved—[Jim Fairlie]—and agreed to.

Amendments 164 and 165 not moved.

Amendments 128 to 131 moved—[Jim Fairlie]—and agreed to.

Schedule 2, as amended, agreed to.

Sections 41 and 42 agreed to.

Section 43—Commencement

Amendment 215 not moved.

Sections 43 and 44 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill.

I thank everyone for their attendance. That concludes our business in public and we will now move into private session.

11:47

Meeting continued in private until 12:11.

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