



OFFICIAL REPORT
AITHISG OIFIGEIL

Net Zero, Energy and Transport Committee

Tuesday 25 October 2022

Session 6



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Pàrlamaid na h-Alba

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NET ZERO, ENERGY AND TRANSPORT COMMITTEE
27th Meeting 2022, Session 6

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Fiona Hyslop (Linlithgow) (SNP)

COMMITTEE MEMBERS

*Natalie Don (Renfrewshire North and West) (SNP)

*Jackie Dunbar (Aberdeen Donside) (SNP)

*Liam Kerr (North East Scotland) (Con)

*Monica Lennon (Central Scotland) (Lab)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jo Green (Scottish Environment Protection Agency)

John Kerr (NatureScot)

Neil Langhorn (Environmental Standards Scotland)

Jim Martin (Environmental Standards Scotland)

Mark Roberts (Environmental Standards Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Net Zero, Energy and Transport Committee

Tuesday 25 October 2022

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Edward Mountain): Good morning and welcome to the 27th meeting in 2022 of the Net Zero, Energy and Transport Committee.

I am not seeing any feed on the screens. Can we rectify that, please, before we go any further?

The first item on the agenda is consideration of whether to take in private agenda items 4 and 5, on consideration of the evidence that we will hear. Do we agree to take those items in private?

Members indicated agreement.

Environmental Regulation

09:30

The Convener: The second item on the agenda is an evidence session with Scotland's statutory environmental regulators. I refer members to the papers from the clerk and the Scottish Parliament information centre.

Earlier this year, the committee agreed to hold a one-off evidence session with environmental regulators to take stock of environmental law and regulation post-Brexit as well as other recent developments.

I welcome our witnesses. Jo Green, acting chief executive, Scottish Environment Protection Agency, and John Kerr, operations manager of protected areas, innovation and data, NatureScot, both join us remotely. Mark Roberts, chief executive, Environmental Standards Scotland, joins us in the committee room. I thank you all for accepting our invitation to attend.

Members will ask questions in turn. It would help broadcasting staff if members could direct their question to a specific person on the panel or set out a running order for answers.

I will ask the first question, which I direct to Jo Green. At the beginning of last year, and in the course of this year, SEPA struggled with data breaches that led to immense problems with its computer systems. Could you bring us up to speed on how you have resolved that situation and whether you are now working online and are back to your previous form?

Jo Green (Scottish Environment Protection Agency): Good morning. We were the subject of a significant and sophisticated cyberattack on Christmas eve in 2020. It was a serious incident and we are still in recovery from it.

It is fair to say that we had a fairly quick recovery period early on, so we were immediately able to reinstate services such as our flood warnings service, which is a critical service in Scotland. We decided not to simply build back all the old systems but to develop and build new systems for the future.

In the early months, we provided service updates so that people could understand the services that we were able to deliver. As we speak, our services are still being delivered—it is just that we have a lot more building back to do on the new systems. At the moment we are perhaps working a bit inefficiently because we do not yet have the modern new systems that we need. We are still in that process.

The Convener: I have two further questions to follow up on that. You lost a significant amount of data, much of which I understand cannot be recovered. Is that delaying your ability as an agency to respond to requests for information in all the spheres in which you operate, or are you past that stage?

Jo Green: Immediately after the attack we had little access to data, so your assessment is spot on. However, we have made really good progress on data recovery. It has required hard work and detailed effort, but we have now recovered more than 85 per cent of our data.

The Convener: Is the agency responding to requests for information as quickly as you were doing prior to December 2020, or are you still behind?

Jo Green: One of the challenges that we had was that of access to our old records to be able to respond to things such as freedom of information requests. That was one of the most challenging service areas but, again, we are making progress on that backlog. If the committee wants, I can write with the most up-to-date position, but we are in a much better position than the very difficult position that we were in.

The Convener: Rather than push that point, I will go to Mark Ruskell for questions, but it would be helpful if you could brief the committee in writing on exactly where you are on that issue. I am a farmer, and I hear from farmers and landowners that SEPA still struggles to provide the information that they require. Whatever the answer is, it would be helpful to have it confirmed in a letter.

Jo Green: I am happy to set that out. I am not painting a picture where everything is rosy; the attack on us was hugely difficult, and recovery and rebuild are still under way. We will write to the committee on the points that you raise.

Mark Ruskell (Mid Scotland and Fife) (Green): We could see a bonfire of European Union environment law in the months and years ahead due to the Retained EU Law (Revocation and Reform) Bill, which is currently working its way through Westminster. In your respective roles in your organisations, what work are you doing to consider what the impacts of the bill might be, which laws should be saved and which could be legitimately replaced?

John Kerr (NatureScot): To be honest, we have just started getting to grips with what the bill means in the past couple of weeks. It is clear that the European habitats regulations are key for our protected area work. Elements of species protection are also involved—for example, in the European protected species regulations.

The other key piece of European legislation, which is rarely used in Scotland, is the environmental liability regulations, which implement the environmental liability directive—the polluter pays principle. Along with SEPA, we are key investigators under that piece of legislation.

The key legislation is the habitats regulations that implement the birds and habitats directives. As currently written, in Scotland as across the rest of the United Kingdom, the regulations still implement the obligations of the directives. That has been a great benefit following our exit from the EU, and we do not see any need to drop it.

We are starting to look at the overall implications of the bill. The sunset clause is challenging, but I understand that there might be the ability to restate some key regulations. We are concerned by the implication that it will take up a lot of the parliamentary time that would otherwise be dedicated to other pieces of legislation that would help us to address the nature and climate emergencies, for example. I am mainly thinking of the natural environment bill and the agriculture bill that are to go through the Scottish Parliament.

Those are the key concerns for us. Having to tidy up something that comes from Westminster gets in the way of our ability to look forward.

Mark Ruskell: Have you set up a special unit to look at the issue? What are the resourcing implications? There are 570 environmental laws that might be covered by the bill.

John Kerr: We have not done that within NatureScot yet. We will no doubt be speaking to the Scottish Government. The Department for Environment, Food and Rural Affairs and Natural England are doing a lot of the work, but we are involved. I am involved in various United Kingdom interagency groups, as are the other devolved Administrations. We are keeping tabs on the work with our colleagues from south of the border.

The work in DEFRA only started over the summer, although it apparently also did quite a lot of work on the green paper that was released in the spring.

Mark Ruskell: Jo Green, what is your view?

Jo Green: There is not yet enough detail for us to be able to understand the implications of the Retained EU Law (Revocation and Reform) Bill for SEPA's work. Many of the environmental laws under which we currently operate have their origins in EU directives. Our statutory purpose is to protect and improve the environment and to contribute to social and economic success. We seek to deliver effectively, within the law that is set by the UK and Scottish Governments.

In general, we would expect there to be no loosening of environmental standards and no regression. That would not help Scotland to tackle the climate and biodiversity emergencies and the complex environmental challenges that we face. We would also want to see sufficient flexibility in any approaches that are developed, so that they reflect and respect the Scottish position.

It is difficult at the moment because there is no detail about what the bill will look like. As that detail becomes available, we will work with the Scottish and UK Governments on that and will look at the implications.

Mark Ruskell: Is SEPA looking at any areas of concern at the moment?

Jo Green: That is really for the Government. We will work with Scottish Government colleagues on the common frameworks on matters such as best available techniques, radioactive substances or emissions trading. We are quite actively involved in the common frameworks in a number of areas but are less involved in the bill because there is not very much detail for us to get a grasp of at the moment.

Mark Ruskell: There is a lot of uncertainty. What is the ESS view on this?

Mark Roberts (Environmental Standards Scotland): I echo much of what Jo Green and John Kerr have said. Part of ESS's remit is to look at the effectiveness of environmental law, so the proposed legislation is very significant.

We are actively monitoring the bill's progress at Westminster. We are in regular discussion with our counterpart south of the border, the Office for Environmental Protection, about its work in monitoring what is happening, because that has a UK-wide effect. We are speaking to Scottish Government colleagues about how they plan to handle that within the devolved context.

I emphasise what John said about the scale and timetable being particularly challenging, given the timetable that has been set out, because of the time that the Government will have to spend on dealing with the bill and the need to use parliamentary time to scrutinise any changes to legislation.

ESS will look at particular pieces of legislation and particular regulations in the context of our ongoing monitoring work. John Kerr mentioned the habitats regulations, which are critical for biodiversity and nature loss. That will be a key priority for us in the near future. To echo what Jo Green said, there is still a lot of uncertainty about exactly what will be involved. However that manifests itself, it will be key for our future work.

Mark Ruskell: Do you have any indication of when there might be more certainty?

Mark Roberts: The simple answer to that is no.

The Convener: Are you finished, Mark?

Mark Ruskell: Yes.

09:45

The Convener: I am sorry—there are two Marks. That is confusing. I thank Mark Roberts for answering that question and Mark Ruskell for confirming that he is finished.

Monica Lennon (Central Scotland) (Lab): I thank the panel. I was really interested to hear those answers.

I know that drilling down to get some examples will not be easy, but how might the potential divergence in environmental standards across the UK impact on the ability to tackle cross-border environmental issues or undermine the effectiveness of initiatives in Scotland? If you could touch on some examples, that could help the committee.

John Kerr: We do not have many cross-border cases in our protected areas and protected species work. There are only three cross-border European special area of conservation and special protection area sites. Two of those—in the Solway and on the Berwickshire and north Northumberland coast—are marine; the Tweed is the third. Cross-border work is therefore a very small part of our day-to-day casework.

It is clear that having regulatory divergence across the border will not help decision makers, competent authorities or developers. An example might be offshore wind developments in Scotland with a grid connection in England. That is an inevitable consequence of two Administrations being involved in such a scheme.

We already have a degree of cross-border divergence for our sites of special scientific interest suite. We have slightly different legislation on each side of the border. There are other areas in which there is slight divergence. I have already mentioned the environmental liability regulations—they are very subtly different in England. There are already instances in which the legislation or process on one side of the border is slightly different from the legislation or process on the other side.

As I have said, that does not currently really cause us a huge amount of difficulty. It is a matter of having communication links with our counterparts on the other side of the border.

Jo Green: On divergence, as a practitioner environment agency, we are already familiar with working within two systems at the UK level—for example, through UK regulations such as the Transfrontier Shipment of Waste Regulations

2007—and on environmental matters in Scotland that are primarily devolved. We are used to working practically at the UK and Scottish levels.

As John Kerr mentioned, divergence is not new. Strategic environmental assessments have a broader scope in Scotland than elsewhere. Divergence is not new in that context.

It comes down to us working with agencies and other bodies across the UK on a practical basis to make things work as well as we can. A key interest is in ensuring that we can simply, effectively and practically apply environmental law. There is a complexity issue for businesses that operate across the UK, and clarity is needed for people who are being regulated on what they need to comply with. They need to have sufficient time to adapt if changes are coming through. The issue is more about that practical level, but divergence is not brand new to us as a regulator.

Monica Lennon: I will press you with a supplementary. Would there be any resource implications? You have talked about some of the practicalities. It sounds like more of an operational issue. Would it require additional resource?

Jo Green: There are some resource implications for SEPA arising from EU exit. That is related to the common frameworks. There is a need for us to provide more advice to the Scottish Government in technical areas such as emissions trading to support its policy development in those areas. That reflects its role in them. It is a new need for us to provide that expert advice to Government in Scotland and the UK—previously, that would have been done at a European level. There is more pressure on technical expertise.

Mark Roberts: As John Kerr and Jo Green said, regulatory divergence exists but there is potential for there to be greater regulatory divergence in the future. We will quickly get into hypothetical discussions about what might happen.

We said in our letter to the committee that we are supportive of the establishment of the common framework mechanism as a way of resolving potential difficulties. It remains to be seen how well that will operate in practice but it is very encouraging that those mechanisms are in place.

John Kerr mentioned protected areas that operate across borders. We also have two river basins that operate naturally across the border between Scotland and England—the Tweed and the Solway—and, as I mentioned in my answer to Mark Ruskell, we could conceivably do work on that with our counterparts in the Office for Environmental Protection in England and Northern Ireland. We have a memorandum of understanding with them but it would depend on whether we collectively felt that there was a case

for doing that work. However, that mechanism exists and is available to us.

Monica Lennon: My next question is aimed at SEPA and NatureScot, so I will return to John Kerr and Jo Green. Will you advise the committee whether the current system of environmental assessment is fit for purpose? To get a further steer on that, I will go to Jo Green first.

The Convener: I think that there is a slight delay with BlueJeans at the moment, which is showing in our WhatsApp as well. Jo, I do not know whether you heard that question, but you are under the microscope now.

Jo Green: I caught the tail end of it. Was it about environmental assessments?

Monica Lennon: Yes. I was asking for SEPA's view on whether the current environmental assessment system remains fit for purpose.

Jo Green: Okay, yes, I understand.

Thank you for the question. Basically, the answer is yes, but we are always open for discussions about how the approach can be improved.

We are a statutory consultee for environmental impact assessments and strategic environmental assessments, which are important for protecting Scotland's environment and are required for developments, plans and decisions that might lead to significant impact on the environment. It is important to recognise that they are also mature processes that are well understood by developers and regulators.

We are always open to approaches that make assessments simpler, as long as they do not reduce the outcomes that we achieve from them. Any changes should be at least commensurate with the environmental standards and protections afforded by the current approach to assessments.

In part 5 of the Levelling-up and Regeneration Bill, it is not clear what the proposed changes are and how the new approach to environmental outcomes reports will work, so it is difficult to express a view at this stage on what will happen in the future. As I said, at least the current approach and assessments are well known and well understood. Any changes just need to be clear.

Monica Lennon: I understand. Do you have any recommendations or suggestions for the Government or the Parliament on how the system could be improved?

Jo Green: I do not have any in relation to the current approaches, which we have been working with for a while now, but I can check with colleagues and come back on that question. As I said, we are always open to improvements. On the environmental outcomes reports, it is just that

there is uncertainty about what improvements people are looking to drive through the new approach.

Monica Lennon: I put the same question to John Kerr. What is NatureScot's perspective?

John Kerr: Broadly, I echo what Jo Green has said. The current provisions for environmental impact assessments, strategic environmental assessments and habitats regulations appraisals are well understood and are broadly fit for purpose. However, as Jo Green said, we are always open to various improvements.

One of the criticisms that could be made about EIAs relates to proportionality. There is a tendency for very long environmental reports to be produced, which must cost a lot of money for some developers. We, as regulators, then need to work our way through those reports. A lot of time and work is involved in that, which is fine for the right development but perhaps not for every proposal that comes along. Most of the changes that we might suggest relate to implementation rather than legislative fixes.

The British schemes are generally very well understood. Others have said that there is quite a large industry of consultants producing such reports. That is a good thing; it means that the quality of the reports that regulators have to look at is generally pretty good.

Monica Lennon: That is helpful. In the interests of time, I will pass back to the convener.

The Convener: Perfect. The next questions are from the deputy convener, Fiona Hyslop.

Fiona Hyslop (Linlithgow) (SNP): Good morning. My first question is for John Kerr from NatureScot. I want to focus on the new system involving environmental outcomes reports. You have already indicated that there is not much detail about that in part 5 of the bill. What would be the positives and the negatives of that system? How might it affect your role in the process?

After John Kerr answers, I will ask Jo Green the same question.

John Kerr: In relation to EIAs and SEAs, it could be quite positive to have an outcome to aim for through the report that is produced. In the current system, a quite detailed analysis of the impacts is produced, but there is no fixed outcome. However, there is an outcome in the HRA process. An appropriate assessment must involve an HRA being carried out in relation to the conservation objectives that are set for each protected habitat or species at the relevant site. The ultimate outcome is achieving favourable conservation status. There is no such outcome for EIAs and SEAs.

I do not think that the committee will be surprised to hear me say that the negatives relate to the uncertainty. We do not know the details or what the final regulations will give us. There are a lot of rather vague provisions that allow the secretary of state to do all sorts of stuff, and we do not yet know how far those will be taken either now or in the future.

10:00

Having said that, section 129 of the bill suggests that some of the existing regimes might be retained. Adding into the process an additional assessment against an outcome will make the whole process a bit longer. At the moment, that is as far as we can take things, because we simply do not know the detail of what changes might happen.

The other point to make is that most of the provisions in that part of the bill relate only to English legislation and English provisions. Therefore, significant changes would have to be made, otherwise it would not make much sense from a Scottish perspective.

Fiona Hyslop: I put the same question to Jo Green.

Jo Green: At this stage, there is little detail about the potential new approach or what might be expected in the environmental outcomes reports. The definition of "outcomes" is an important aspect, but there is no detail on that, so it is tricky to express a view.

Any replacement should provide a robust and effective evidence-based approach that provides consenting authorities, consultees and affected communities with clear information about the environmental impacts of a proposal.

I come back to the point that Scotland is more ambitious and progressive in some key areas of environmental protection. That is clear from the 2045 net zero target. We want there to be sufficient flexibility in any new approach to reflect and respect the Scottish position. That is potentially both a negative and a positive, depending on how things pan out.

As John Kerr said, one of the negatives is the uncertainty and the potential complexity of the new system. If change is coming, it must be clear what that change is, and sufficient notice must be given to allow people to adapt to it.

Fiona Hyslop: How might SEPA's role in the process be affected? You are guardians of the environment for Scotland. Do you think that you would have enough control in the new system? What consultation has the UK Government undertaken with you to discuss the plans to

implement the new, outcomes-based system in Scotland?

Jo Green: I am not aware of the UK Government engaging in any consultation with SEPA on any of the detail of what is proposed. Given our formal role in the process, it is clear that we have a strong interest. We are a statutory consultee on the current environmental assessment approaches, so we have a real interest in this area, but there is uncertainty about how things will pan out under the new approaches.

Fiona Hyslop: How might the new arrangements affect NatureScot's role? What consultation has the UK Government had with NatureScot to discuss the new, outcomes-based system as it would apply to Scotland?

John Kerr: We are in a position that is similar to SEPA's, in that the UK Government has not consulted us at all on the new system.

I scrutinised the proposed legislation again this morning, and I could see nothing in it that would ensure that statutory consultees would be part of the EOR regime. There is a vague reference to other public bodies being involved, but there is no explicit requirement for statutory consultees. That might change, depending on how the final regulations are formulated, but, given that we are a statutory consultee under the EIA, SEA and HRA processes, we would expect to be a statutory consultee under whatever new process comes along.

At the moment, we do not know for sure what our role would be. We hope to be involved in setting the environmental outcomes, for example, but that is not explicit in the bill, either.

Fiona Hyslop: Of course, the bill just talks about consulting the Scottish ministers and not about seeking consent. That might be an issue that you will want to take further, convener. However, I am conscious of the time, so I will hand back to you.

The Convener: Thank you very much. I think that Jackie Dunbar has a question to ask.

Jackie Dunbar (Aberdeen Donside) (SNP): Good morning. I was going to ask a question about the consultation, but the issue was covered in the answers that were given to Fiona Hyslop's questions. I would therefore like to ask Jo Green and John Kerr another question. What involvement have SEPA and NatureScot had in the development of the environmental common frameworks, and what will be entailed in the future?

Jo Green: That is an area in which we have been more actively involved. As I said before, we are used to joint working at both the UK and Scottish levels. We did that as part of the EU, too.

We have rules and mechanisms that support joined-up working under the common frameworks. For example, we are a core member of the radioactive substances policy group, which was established in September 2018 and which provides a forum for the review and development of proposals for change with respect to policy, strategies, legislation, regulatory standards and good practice on radioactive substances. That forum provides national oversight and facilitates the exchange of information and views on that policy area. It is not a decision-making body—we are a practitioner. SEPA has a number of such roles across a number of areas, such as best available techniques, in the different groups and networks that we engage with under the common frameworks.

We operate under the common frameworks. An example of that relates to the UK emissions trading scheme. Since 2018, we have worked in collaboration with the Scottish Government, the UK Government and the other devolved Administrations and regulatory bodies to plan, consult and implement the UK ETS in Scotland. We are a member of a number of working groups to facilitate that. SEPA has supported the Scottish Government through the change of governance around the UK ETS, which was previously a reserved matter. We helped to support a smooth transition from the EU ETS into the new UK ETS in 2021 for around 100 operators, including two aviation operators that are covered by the scheme in Scotland. That is an example of what we are doing at a practical level under the common frameworks.

Jackie Dunbar: That sounds like an awful lot to be getting on with. I put the same question to John Kerr.

John Kerr: We have not been involved in any of those areas, because none of those common frameworks covers our remit. SEPA has been the lead for all that.

The Convener: The next questions will come from Liam Kerr.

Liam Kerr (North East Scotland) (Con): Good morning. I want to change the topic to water quality and sewage overflows. Jo Green, only 10 per cent of sewage overflows are monitored in Scotland, whereas 80 per cent are monitored in England. Why is there that disparity? Should that be changed?

Jo Green: Over the past 20 years, SEPA has made significant progress, in general, in improving rivers under a wide range of pressures through targeted regulation and partnership work. More than 2,000 Scottish water courses are classed as "high" or "good" under the water framework directive.

Our combined sewer overflows are an integral part of Scotland's sewerage system. They are designed to discharge at times of heavy rainfall to prevent sewage from backing up and flooding houses, and SEPA regulates discharges to the environment, including discharges from CSOs.

Climate change is leading to an increased frequency of high-intensity rainfall events, and there is a risk that the number of unsatisfactory sewer overflows will increase. It will be neither effective nor, in some cases, feasible for Scottish Water to continue to build bigger pipes and storage tanks for combined sewer overflows under the ground. As a result, we are working with local councils and Scottish Water on new approaches to managing rainfall that use blue-green infrastructure to absorb rainfall, reduce flood risk and minimise sewer overflow spills. That is the bigger picture.

I will give a bit more detail. We are taking a targeted and prioritised approach in Scotland. There are 3,667 combined sewer overflows in the 50,000km of the network—

Liam Kerr: Forgive me for interrupting. My question might not have translated well. I asked specifically about the 10 per cent of sewage overflows that are monitored, which is markedly less than the proportion being monitored in England. Why is there that disparity? Why are we monitoring only 10 per cent of overflows? Is it your view that we should be monitoring many more?

Jo Green: Monitoring is really important. In December 2021, Scottish Water published a route map for improving urban waters. As part of that, Scottish Water is committed to installing approximately 1,000 monitors on network and treatment work CSOs that discharge into the highest priority waters. There is a prioritisation approach. That will improve understanding of how the CSOs are operating and will provide transparent information about their performance. Scottish Water is currently responsible for 3,667 CSOs, of which 34 are being monitored. There have been improvements, and we are taking a prioritised approach to monitoring.

Liam Kerr: If only 10 per cent of overflows are monitored, and given that overflows have increased by 70 per cent since 2017, to about 563,000 hours, does that suggest that the problem of sewage overflows is actually far worse than the data currently suggests?

Jo Green: We already have data on that. As I outlined, a lot of work to improve monitoring has been planned, with up to 1,340 monitors, so we will have better information over time.

Liam Kerr: I will stick to the same topic in my question to John Kerr. In October, *The Courier* reported that raw sewage had been pumped into

Loch Leven. At the time, NatureScot called that a "serious pollution incident". The report asked the minister for a response, but she appears to have declined. A spokesman talked about historical investment and some general on-going investment. Given that incident, and the statistics that I just put to Jo Green, is it NatureScot's view that the issue is not being taken seriously enough? Do you think that anything will change?

John Kerr: I am not completely familiar with the incident at Loch Leven, although, historically, quite a lot of pollution has affected that vulnerable protected area and a national nature reserve that we are quite involved with. I cannot answer the specifics of your question, but I might be able to come back to the committee on that if necessary. It is not an area that I am familiar with.

Liam Kerr: I will slightly rephrase my question. NatureScot called it a "serious pollution incident". Does NatureScot think that we are getting sewage overflows right in Scotland? Given that the evidence shows that there has been a 70 per cent increase in overflows in the past five years, does NatureScot not have serious concerns about that?

10:15

John Kerr: We do not see that issue impacting all that often on the protected areas that we are involved in monitoring. However, as I have said, Loch Leven is a bit of an exception to that. We do not have a lot of information about the effects on protected sites and species, so we do not have a firm view about the effect on our interests.

Liam Kerr: Some might suggest that the lack of information is due to the fact that only 10 per cent of the overflows are monitored, but the committee will no doubt discuss that.

Mark Roberts, ESS has set out several priorities and has carried out eight baseline evidence reviews. Do those baseline evidence reviews incorporate your priorities of

"Progress on climate change adaptation, including planning for extreme weather events"

and/or the assessment of

"Sewage discharge into the aquatic environment"?

If not, when do you anticipate having those baselines?

Mark Roberts: You are absolutely right. We did those reviews of the evidence across the range of our remit and published them over the past year. The impact of sewage on the aquatic environment will be one of our work priorities, and we will look at what is going on. We are engaging with Jo Green's colleagues at SEPA and with colleagues in Scottish Water to look at what data is available, and that will be one of the priorities that we take

forward. Obviously, the overlap with the impact of the changing climate and changing rainfall regimes will form part of that work. That is quite a long answer for “yes”.

Liam Kerr: Very good. Is there an issue with basing those reviews only on publicly available data, given, for example, the lack of sewage overflow data, which we examined earlier?

Mark Roberts: We want to explore with Scottish Water whether it has any additional data from its longer-term monitoring or greater range of monitoring that it could look at, and we will also speak to SEPA about the prioritisation of the most vulnerable and sensitive water environments. An on-going piece of work for us is to explore the full range of available data.

The Convener: I think that Liam Kerr might have some further questions on a slightly different subject, but before we come to those, I have a question for Jo Green on this subject. Sewage discharge is an interesting issue. Did SEPA lose all its records of every sewage discharge into a watercourse in Scotland? It collected that data, so do you have those records? If so, can you publish them, and do you monitor them?

Jo Green: That is a very specific question. I will take it away and come back to the committee on that, as I have committed to do on data more generally.

The Convener: That is fine. Thank you—I will take that.

There are some questions on changing weather and extreme weather conditions. How are SEPA and NatureScot monitoring and reacting to extreme weather conditions? We seem to get massive downfalls of rain, which overload every system and watercourse, and then periods of drought, as we had this summer. My understanding is that a lot of the restrictions on water abstraction were in place because, in some cases, waters were being transferred from one catchment to another, based on legislation from 1953. Will you very briefly explain to the committee whether the system of abstraction from watercourses is operating effectively, given the extreme weather conditions? Should we review the system to take into account extreme droughts? I will bring in John Kerr and then Jo Green.

John Kerr: Again, that is quite a specific question. I have not been involved in that. We do not routinely monitor at that level the impact of extreme weather on, for example, protected habitats and species. We have had a couple of cases in which extreme weather has had an impact. For example, when there are extremely low water levels and high temperatures, there can be an impact on freshwater pearl mussels or salmon trying to enter rivers. That has led to a

couple of cases in which we have had to see what emergency works we can carry out. However, we do not have much experience of water transfer between catchments. I think that SEPA will know more about that.

The Convener: Before I come to Jo Green, I make it clear that the reason why I ask the question is that I have an interest in and knowledge of the issue—I know that 40 per cent of the River Spey is abstracted and sent down to Fort William, which puts extreme pressure on water resources. I make no bones about the fact that I benefit from those water resources, as they provide drinking water for the lower parts of the Spey catchment. Given that water levels were so low this year, there was an almost impossible situation. I therefore wonder whether you are on top of abstractions and whether you think the old legislation relating to them is right in today’s modern age.

Jo Green: On water scarcity and climate change, this summer was the driest in the east since 1940, so we are starting to experience the impacts of climate change. SEPA manages water scarcity events in line with “Scotland’s National Water Scarcity Plan”, which is based on five levels. The action within those levels is informed by our monitoring network. With severe water scarcity of the type that we experienced, the action moves to suspending abstractions. We had an unprecedented situation in Scotland over the summer. At that severe end, we start to suspend abstractions.

As a general point, such conditions will become more frequent and more severe. England has more experience of managing that type of weather. The key message is about the resilience of businesses and resilience within catchments, which is about the storage and efficient use of water. It is also about the ability to do more to join up within catchments to share water. From this summer, there is a lot of learning for a lot of people on how we approach things in future and on resilience. It was the first time that Scotland had faced such a situation on that scale.

The Convener: I think that the first time was in 1978, when we had a very dry summer—or perhaps it was 1976; I can never remember which year it was. As far as I am aware, we have had catchment management plans for 12 years, and it appears that they are not moving forward. Maybe we can develop that conversation later.

The next question is from Monica Lennon.

Monica Lennon: That was before I was born, convener—but maybe I should not have said that.

The Convener: Now I am feeling my age.

Monica Lennon: I turn to the issue of waste. What are the key challenges to and priorities for ensuring policy coherence in delivering waste targets and policies in the context of a wider shift to a circular economy and achieving net zero emissions? I will let Jo Green catch her breath, so maybe Mark Roberts wants to answer. The ESS strategic plan has proposals on illegal disposal and management of waste, progress against waste and recycling targets and developing a circular economy.

Mark Roberts: Briefly, that is one of the priority areas for our future monitoring and analytical work. We are also conscious that the Scottish Government is planning to introduce in the near future a circular economy bill, which will obviously change the governance arrangements in that respect. We will be keeping in very close contact with Scottish Government colleagues on that.

That is probably all that I can say at the moment. We do not have any active plans to carry out investigatory work on waste but, as I said in response to Liam Kerr, that is one of the areas that we will be taking forward over the next few years.

Monica Lennon: That is helpful. We have had some discussion with the cabinet secretary on the illegal disposal of waste on quite a massive scale and the role of organised crime in that. Do you have anything to say to the committee about that? How much of a concern is it?

Mark Roberts: It is absolutely a concern. It can affect individual communities in a significant way. Again, we will be drawing together a broader picture of what is going on in that area of policy, and we can of course always respond to representations from individuals, organisations and communities. If they came to us, that would trigger our doing some investigatory work.

Monica Lennon: That is good to know. Over to you, Jo.

Jo Green: We are strongly supportive of a circular economy and we will continue to work with Government on that. After all, we have to manage the fallout of not having it.

The issue cuts across a range of SEPA's interests, one of which is the involvement of serious organised crime in illegal waste disposal and landfilling in Scotland. That has been—and will continue to need to be—a significant focus for us, working with partners, because it is a significant issue in Scotland.

More broadly, we are operating on a number of levels on this issue. There is the transition in respect of landfilling in Scotland, and we are working with the Government on the new deposit return scheme to support the move to a circular

economy. We are working on this on a number of fronts, and we are strongly supportive of the circular economy and preventative approaches, given the significance of the issue in Scotland.

Monica Lennon: Sticking with you for a second, Jo, I know that you will be aware that the amount of Scottish household waste that was landfilled in 2021 increased from the previous year and that it was the first time in 10 years that there had been no decrease. Are you able to give some explanation for that?

Jo Green: I will come back to the committee on that specific point, if that is okay.

Monica Lennon: That would be good. Does NatureScot have a view on the question?

John Kerr: It is not really covered by our core remit. Obviously, we support a circular economy and any initiatives to prevent or reduce the illegal dumping of waste in some of our interests, but it is not core to our work.

Monica Lennon: Thank you.

The Convener: I will call Mark Ruskell to ask a specific question in a minute and I will then call other members to ask about finance, but first I want to make abundantly clear what is clearly set out in my entry in the register of members' interests: I farm in Speyside and have an interest in a fishery in the River Spey. My questions were more general rather than being specifically about the Spey, but I want to ensure that there is no dubiety or question about this and to make it clear that that is where my knowledge comes from.

Mark Ruskell: In its early work, ESS has had a very welcome focus on air quality and on whether we have the right monitoring and regulatory frameworks in place to tackle poor air quality. I note that one of the report's recommendations is that we need better monitoring, with bodies that can carry out such monitoring and then take very quick enforcement action over air quality breaches.

I ask Mark Roberts to reflect on that and Jo Green to reflect on whether SEPA has an active role to play in that work. Is an active conversation taking place about how the remit of a body—or bodies—could be strengthened or changed as a result of that ESS recommendation?

10:30

Mark Roberts: The recommendations in our improvement report on air quality are under consideration by the Scottish Government, and it has six months to come back to the Parliament with what it proposes to do to respond to them. We have not yet had discussions with the Scottish Government on what its options are or what its

thoughts might be about the monitoring body. I will not steal Jo Green's thunder, but SEPA is obviously one option as it has the strength and power. However, we need to work through the discussions between SEPA and the Scottish Government during the next few months.

Mark Ruskell: Okay. Jo, do you have any thoughts on that?

Jo Green: My thoughts are similar to those of Mark Roberts. We support the recommendations in the ESS report. SEPA has had a significant role in data and air quality and in supporting local authorities and others on low-emission zones so, as Mark said, that needs to be explored.

Natalie Don (Renfrewshire North and West) (SNP): Good morning, panel. I have been waiting patiently. My first question is directed to Jo Green and John Kerr. How are reductions in budgets impacting SEPA and NatureScot at a time when they are required to take on additional regulatory and statutory functions resulting from EU exit and the demands of tackling the climate and biodiversity crises?

John Kerr: It is challenging. We continue to speak to the Scottish Government about tackling the nature and climate emergencies, which are our core priorities at the moment.

The budgetary situation in the coming years means that we are looking closely at how we can deliver some of our regulatory work and better utilise staff on cases where we are properly adding value, rather than just providing assurance to other competent authorities. We are also trialling an online process that uses artificial intelligence to help and provide more advice and information about specific cases. We hope that that will take some of the pressure off some of our staff and provide more clarity and information to regulators and developers. The whole purpose of that is to utilise our staff better and become a little bit more efficient. However, it is challenging.

We have been lucky to secure additional peatland action funding and nature restoration funding, which are separate from our core funding. As I said, however, we continue to speak to the Scottish Government about that.

Jo Green: We are conscious that the public sector faces resource restraints. We face uncertainty around that, and SEPA is not alone. Our two sources of funding are grant in aid and charging, and for this year grant in aid funding came largely from what we call a flat-cash settlement. That means that we got the same amount of grant in aid funding, but this year we have had to absorb increased pressures relating to pensions and, significantly, pay, so there are pressures on that funding.

We understand that the Government is in a difficult position as it does not have the certainty for the future that would allow it to plan what the likely level of grant in aid funding will be. As ever, it is therefore good to see the focus on environment in the programme for government; that is a good thing.

The second piece of that for us is the capital allocation from the Scottish Government. We have greater certainty about the capital allocation for future years for SEPA, which is welcome. That is partly to support the reform of services and digital reform. We are comfortable at the moment with the level of capital allocation that has been committed to us.

I will make a third, broader point. We are one public body within a bigger picture, which is the scale of the transition and adaptation that Scotland needs to go through in the coming years. We cannot all rely on public money, so what are the different funding mechanisms that we might have for investment in the future? They might involve bringing a bit of public money together with private funding, but what are the mechanisms for shifting the approach to investment and the transition within Scotland? I know that the Government is considering that as well.

Natalie Don: I direct my next question to Mark Roberts. I understand that the ESS budget has increased, and ESS has stated that the increase is to cover operating costs and staff. Will you confirm whether ESS has now recruited its full complement of staff and whether it anticipates that it will require any additional budget for operating at full capacity?

Mark Roberts: We are still in the process of recruiting up to what we aim to have as our full complement. Indeed, interviews are going on for posts this week. Our full complement was identified as 24 and we are still working through that. The process has been slightly slower than we hoped, but we are comfortable with our current level of resourcing.

The overwhelming majority of our expenditure is staff costs and we are comfortable with where we are at, given the current level of demand for our work. Of course, I make the caveat that, given everything that we have discussed about the changing legislative environment, demand might look different in the future.

Fiona Hyslop: I point out that I am a nature champion for Scotland's extraordinary blanket bogs.

How might a cut to NatureScot's capital budget impact its ability to achieve targets for peatland restoration and other areas of work? Peatland restoration is key to us meeting our climate change and biodiversity crisis targets.

John Kerr: Our capital budget is part of our overall grant in aid and it is not spent on matters such as peatland restoration. We administer the separate peatland action fund, which is the key fund for peatland restoration work. Our capital budget is spent on our capital assets such as our information technology systems, vehicles and capital items on our estate—our offices and a large extent of national and other nature reserves. The change to the capital budget that the Government proposes will not have an impact on our ability to fund peatland restoration work because that comes from a separate fund.

Fiona Hyslop: Will that ring fencing of peatland restoration protect that important fund?

John Kerr: It should do and I hope that it will. Ring fencing the money is probably the best way to get us towards that because it is so important. That is the ambition.

Liam Kerr: I have a brief supplementary question for Jo Green. Natalie Don asked an important question on the subject, but I am not sure that I heard the answer.

Jo, you said that SEPA is comfortable with its capital allocation, but I note that the capital spending review cuts it by 53 per cent, which is around £3 million, and the overall budget allocation represents a real-terms cut of about 7.3 per cent. I put to you the question that I think Natalie Don was getting at: how will such a cut impact on SEPA's ability to tackle the climate and biodiversity crises, or will it not do that?

Jo Green: I am not familiar with those figures. The figures that I have for the capital budget are £4.1 million for this year, £6.1 million for next year and £6.4 million the year after. We might need to follow up with the committee after the meeting on where the figures come from and provide any clarification that we can. At this stage, however, we are comfortable with what we know about the capital budget that has been allocated to us.

The Convener: Thank you, Jo, for volunteering to provide that extra information. There have been one or two offers to provide further information to the committee and we look forward to receiving that in due course.

I thank all the witnesses for taking part and sharing their expertise with us. The committee will go on to discuss the evidence that they have given us later in the meeting. We will write to the Scottish Government on the common frameworks in the near future and the clerks will ensure that members see that letter before it goes.

We are all getting used to Zoom meetings, but when the technology does not work at quite the speed that we hope it to, it sometimes lets us down. I thank everyone for working through it.

I will suspend the meeting briefly to allow a change of witnesses.

10:42

Meeting suspended.

10:46

On resuming—

Environmental Standards Scotland

The Convener: We will now take evidence on Environmental Standards Scotland's strategic plan. ESS has a statutory duty to lay its strategic plan before the Parliament, after which the Parliament must consider whether to approve it. The plan was laid on 30 September. The Net Zero, Energy and Transport Committee has been designated as the lead committee to scrutinise the plan, with a view to making a short report to the whole Parliament afterwards.

I welcome back Mark Roberts, the chief executive of ESS. He is joined by Jim Martin, who is the chair, and Neil Langhorn, who is the head of strategy and analysis.

I will start the questioning with a gentle opener. I would imagine that my question is for Jim Martin and that Mark Roberts will probably provide support. Has setting up ESS been an easy process? Will you provide a brief update on how that has gone and the current position?

Jim Martin (Environmental Standards Scotland): Thank you for giving me the easy one.

We managed to vest on 1 October, only nine months after the UK's exit from the EU. Since then, we have been gradually building up the organisation while performing as many of our functions as possible. As Mark Roberts mentioned under the previous item, we are still in the process of recruiting a full complement of staff. In fact, our senior management team was only fully in place four months ago, when Mark joined as chief executive. That was the last appointment to be made to the team.

During this year, we have also managed to carry out a couple of significant investigations—one on acoustic deterrent devices and one on air quality. While building the organisation, we have been trying hard to function as an organisation. However, you have not seen us at our best yet. Once we are fully established, we can move forward.

A significant part of our work so far has been to prepare the strategic plan. That has been a godsend, because it has enabled us to interact with as many organisations and people as possible to get views about how we should go forward. You will see in the strategic plan that, underpinning most of our thinking on vision, mission and values is the approach of being transparent and open and trying hard to listen to people. This year, we have been able to listen to

people about where we as an organisation should go. I am keen to hear the committee's view on where you think the strategic plan is taking us.

Mark Roberts said earlier that we managed to persuade the Scottish Government to increase our budget, for which we are very grateful. I thought that he was very gentle in his earlier response to you. Once we have actually seen our business operating for at least a year from now and we are a year into our strategic plan, we will have a better idea of the resources that are required to make the organisation truly effective. I place it on the record that we are happy with what we have been given and are pleased with the flexibility that the Scottish Government has given us, but we will not know for at least another year what resources we require.

We have had terrific co-operation so far from the bodies that I regard as being under our jurisdiction, but we have not fallen out with them about anything yet. So far, so good. I am pleased that we have managed to build good relationships with the Office for Environmental Protection in England, the interim environmental protection assessor for Wales and the Climate Change Committee.

We have made a lot of progress, but there is still a lot to be done. We are narrowly coming out of the set-up stage and beginning to move into the effective stage. That is where we are.

The Convener: We will come back to the budget—I am sure that committee members will want to ask about that.

Mark, things have got better since you joined, or are getting better. Have you noticed any themes emerging since you took up your role?

Mark Roberts: As Jim Martin said, the key theme is the transition from getting established as an organisation, and feeling almost like a start-up, to becoming an albeit young but more established public sector organisation.

I pay huge tribute to the transition team, which established ESS and started its work. Neil Langhorn was a key part of that. A new organisation was set up from scratch in a very short period and during the pandemic. That has been really significant. As Jim said, we are now moving out of that phase and into a business as usual role. It is key that we build our profile and our stakeholders' understanding of our role, which is new. I have been keen to focus on establishing our profile and getting our name and role known in the wider community. That builds on work that has been going on for the past 12 months.

The key theme that I would identify is our transition to being a more established organisation, but that remains a work in progress. We touched on some of the more specific

environmental themes during the earlier evidence session. Climate change in the broadest sense, biodiversity and the interactions between those two are critical. Under the previous agenda item, we also discussed the question of sewage impacts on the aquatic environment. As I said in response to a question from Liam Kerr, that is one of our future priorities. There is significant public attention on that at the moment, and it is one of our priorities.

For me, the dominant theme is the scale and complexity of the issues around climate change and biodiversity. Neil Langhorn may want to add to that.

The Convener: Have you found it easy to get other agencies to see your organisation as part of the solution?

Neil Langhorn (Environmental Standards Scotland): In general, yes. Things have been very positive to date. Our engagement with the likes of SEPA, NatureScot, the Joint Nature Conservation Committee and others has been positive. They have all taken the approach that we are an organisation that can help to improve the system, which is what everyone wants.

As Jim Martin said, we have not fallen out with anyone yet. We have had good co-operation, particularly with regard to the data that we need in order to carry out our role. The baseline evidence reviews that we prepare rely on getting a lot of data from other organisations. There were no issues with that and we are looking forward to starting to explore some of those areas with them as we move forward.

The Convener: That all sounds very positive, which is good news.

Monica Lennon has some questions.

Monica Lennon: Good morning, panel. Given that you will seek to resolve issues through informal agreement wherever possible, how will ESS ensure transparency on the outcome of remedial action? Under what circumstances would you withhold information on remedial action?

Would Neil Langhorn like to answer that first, or is it better to go to Mark Roberts?

Mark Roberts: I will start, and then pass over to Neil.

One of our values, as set out in the strategic plan, is to be transparent, and we are absolutely committed to that. If we receive representation from someone and we are able to secure informal resolution—as we did in our work on acoustic deterrent devices earlier in the year, when we achieved informal resolution with Marine Scotland—we will publish that information and explain what happened on our website. We have

done that. All our representations are documented on our website, with information on what is going on with them. There is a brief summary of exactly what happened, what the issue was and what we did about it, as well as a more detailed report beneath that. We will continue to operate in that way.

With regard to the broader range of inquiries, we are in the process of collecting data and we will make that available. We get a significantly large number of inquiries across a range of environmental issues. Some of those are not appropriate for us to deal with, as they relate to individual cases, and some are not within our remit, but colleagues work hard to work with individuals to direct them to whoever may be the best person to respond to their inquiry, whether that is a local authority complaints process or the Scottish Public Services Ombudsman. Again, we spend quite a lot of time working with individual members of the public in order to do that.

Neil Langhorn: The issue of transparency, in particular around informal resolution, was a bit of a theme that came through as part of our consultation on our strategic plan. It was always our intention to be transparent about what conclusion we came to and what action was being taken, but the feedback has helped to reinforce that approach.

As Mark Roberts said, the acoustic deterrent devices case, which we have already concluded, is an example of how we will publish details of what has been agreed and how, in our opinion, the issue has been resolved. Our intention is that in future, in all cases in which we reach informal resolution, we will publish full details. As Mark said, we are looking at how we make available further details on the range of issues that are brought to us, whether that involves full representation or whether we are referring somebody on.

Monica Lennon: In a moment, I will ask Neil Langhorn about escalation, and in what kind of situation ESS would resort to using the formal powers, but I first want to go back to you, Mark. You described a situation in which you are getting inquiries that are not really appropriate for ESS. Has there been any analysis of why that is? Are people ending up on the ESS website because they have been wrongly signposted, perhaps by MSPs? Alternatively, is it due to frustration at their end when they are not getting what they want from other bodies and regulators?

Mark Roberts: We have not done any formal analysis of that. As ESS is new, people are probably not yet clear about what our remit is. We have been updating our website to try to make that clear, and providing information, including a video

that explains how people can come to us if they have a representation to make.

People perhaps see that we are about environmental standards and think that they can come to us with a specific case. Unfortunately, however, we are not able to look at or investigate specific cases; that is not part of our remit under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, which governs the operation of ESS.

What we can do is gather intelligence from individual cases. If we start to see patterns and multiple cases in the same area, that will feed into our monitoring and analysis work, which will perhaps lead us to conclude that there is something that merits further investigation. We capture that information, but we will not investigate individual cases if they come to us.

Monica Lennon: It is helpful to get that on the record—thank you.

I go back to Neil Langhorn on the question of escalation to using those formal powers. Can you explain that a bit more?

Neil Langhorn: We will consider that case by case. As set out in the strategic plan, one of our principles is that we will always try to resolve things informally if that is possible but, as we consider the case that is before us, we will consider the urgency of the need to act and the nature of the regulatory issue that we need to address. We can always consider whether moving more quickly to one of the more formal powers is appropriate for that case.

11:00

That was the case with the air quality report—we concluded that we needed to move to a formal improvement report—whereas we were able to resolve the ADD case informally. For each case, we will look at whether we can agree a resolution informally, but we might feel that we are not able to do that, or there might be an urgency or seriousness that requires us to move more directly to our formal powers, and we will judge that case by case.

Monica Lennon: I know that colleagues want to pick up on the air quality report.

I have a final question. One of the statutory criteria for ESS is to state how you will

“identify and recommend measures to improve the effectiveness of environmental law”.

I have opened a dialogue with the Scottish Government around the campaign to criminalise ecocide. A lot is happening in dozens if not hundreds of countries, at Government and Parliament level, around the world. Will ESS

monitor that and perhaps make recommendations to parliamentarians, the Government and others?

Mark Roberts: At the moment, that is not within the group of our analytical priorities that I mentioned. However, potentially, we could look at it, if it became a priority. If there was scope to enhance environmental law by building that in, we would certainly assess the potential. As yet, it is not high on our list of priorities, but it is interesting to hear about, and I would be interested in discussing it outside the meeting.

Monica Lennon: It is a global campaign that is quickly building momentum. A meeting is scheduled with the Scottish Government. I will be happy to discuss the topic on another occasion.

The Convener: I think that Liam Kerr has supplementary questions on the first part of that.

Liam Kerr: Good morning to the panel. ESS issued its air quality report towards the end of last month, as Neil Langhorn and Jim Martin mentioned. Your investigation found evidence of

“a continued failure in some areas of Scotland”

to meet legal limits for nitrogen dioxide, and

“weaknesses in ... current operational and governance arrangements”.

The report made six recommendations. Neil Langhorn mentioned that an improvement plan needs to be prepared. My understanding is that that is a requirement under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. To go back to Monica Lennon’s line of questioning, what actual power do you as an organisation have to enforce the recommendations and to demand from the Government timelines for compliance?

Mark Roberts: The way in which the accountability will work is that the Government’s improvement plan must come back to the Parliament and, I guess, potentially to this committee for scrutiny, to see whether it meets the requirements of the recommendations. We do not have the powers to enforce those recommendations—that is not in the continuity act. However, if there was on-going and further failure to comply—in this case, with nitrogen dioxide limits—we could take further action in the future.

I very much hope that it does not come to that. Certainly, the feedback that we have had from the Scottish Government is that it is supportive of the recommendations, and you heard that in the earlier evidence session from SEPA. We look forward to hearing from and working with the Government on how it intends to implement those recommendations. However, I stress that the Government’s plan has to come back to the Parliament for approval.

Liam Kerr: So the improvement plan must come back to the Parliament. I have read the report's key findings and, in my subjective view, they were pretty damning. For example, they suggest that the Scottish Government is not using powers that are available to it and that the overall governance frameworks are complex. Before the improvement plan is prepared—one can anticipate that that will take time—is there any requirement on the Scottish Government to respond to your report?

Mark Roberts: The only requirement is through the requirement to produce an improvement plan.

Liam Kerr: Thank you.

Natalie Don: Good morning to the panel. We have touched on this issue briefly, and the strategic plan sets out some detail on it, but I am looking for further clarification on your triage process and how ESS will prioritise work and identify which issues should be investigated. That question goes first to Neil Langhorn.

Neil Langhorn: That depends on how the issue initially comes to us. For a representation that comes to us, we set out in the strategic plan a set of criteria that we will consider that against. Those criteria are focused on the seriousness of the issue, its potential impact, the risk of that impact and the urgency with which action needs to be taken. We will also consider whether other bodies, such as a scrutiny body or another regulator, are already taking or could take action. Through that triage process, we will decide whether we urgently need to address the issue and move to investigation.

In the months to date, we have found that, when representations come to us, a bit of work is usually involved in getting under the skin of the issue and understanding the exact situation before we can take that decision. It sometimes takes a bit of work in the pre-investigation stage to consider a representation and make a decision, but we aim to do that as quickly as possible.

Issues also come through our monitoring analysis. In effect, we self-generate those issues because we want to look at them. The air quality issue was an example of that. There were clearly issues of compliance, so we took an early decision to take action on that; it was not in response to a specific representation. We have set out similar criteria that we will judge things against, in order to consider the significance, the risk, the likely impact and whether other actors could take action.

That links back to one of our other principles in the plan, which is about adding value and making sure that we focus on areas where we can have the biggest impact. For both types of issues, there will be that triaging, in which we judge things

against the criteria that we set out and decide whether we should take the matter forward.

Natalie Don: To follow on from that, are there any issues that you consider to be outside the scope of investigation by ESS?

Neil Langhorn: There might be, but I cannot think of one off the top of my head. The issue has to be about compliance with the law, about the effectiveness of the law and about environmental law, as defined by the continuity act, but that gives us a very broad remit and a very broad suite of issues that we can consider. As long as an issue meets those broad criteria, we anticipate that we would be able to look into it.

Mark Roberts: To supplement that answer, and as I said in response to Monica Lennon, the criteria would exclude looking at individual decisions by public authorities. For example, looking at an individual planning decision would not be in our remit, but we would absolutely gather that information and, if it formed a broader picture, that might give us intelligence that something more systemic was going on.

Natalie Don: That is helpful; thank you.

Fiona Hyslop: How will you approach monitoring the Scottish Government's implementation of international obligations and its use of the keeping pace power? What do you see as the key risks to your ability to do that?

Mark Roberts: I will start off and then perhaps pass that question to Neil. Historically, the overwhelming majority of environmental legislation has been derived from the EU, and the Scottish Government has committed to keeping pace with EU environmental and other legislation, wherever it is appropriate for Scotland. I think the real challenge is the scale of that.

There is a significant body of European Union legislation in this area. From the perspective of the Scottish Government, being able to keep pace with that is a significant challenge, and, from the point of view of ESS, that represents a significant amount of monitoring work at the European level and the Scottish Government level. We are actively thinking about how we can best do that at the moment—that is a live discussion that we are having. We have established good connections in the EU and Brussels. One of our board members, Paul McAleavey, works for the European Commission and provides a valuable insight into what is going on at the European level.

How we decide whether to report on progress on keeping pace is one of the issues that we are still thinking through. Neil Langhorn might want to say more about that. We have always envisaged that we will look at how individual pieces of work relate to the European context. We would want to

be able to do that, whether the issue is biodiversity, which we have talked about, or any of the other environmental issues that are priorities for us.

Neil Langhorn: I will back up that last point. The arrangements around how we carry out that work involve our working at two levels. The issue of keeping pace is a cross-cutting theme for all the issues that we are considering, whether they relate to monitoring or to a specific investigation. For each issue, we will always consider whether there is a keeping pace angle and whether there are movements at a European level to change the legislation. We have a monitoring and analysis role that involves keeping a handle on the context of what we are working on with regard to what is changing in general and what changes might be planned in EU or international law that we need to be aware of.

Fiona Hyslop: You have said that the issue is big and difficult and that you will investigate things on a case-by-case basis. However, bearing in mind that you have a key responsibility in that regard, which is enshrined in law, and that this committee has a responsibility to scrutinise what you are doing, I would like to press you a little bit more. How are you going to approach the issue? How many members of staff are involved in the work? What international connections have you made? I recognise that you have a board member with a connection to European institutions, but you really need institution-to-institution connections. All of that is key to your role.

The Convener: I would like Mark Roberts to answer that question first, and then I will bring in Jim Martin to talk about how, in his position, he will push those things. I am sure that he will want to support Mark.

Mark Roberts: In terms of international connections and institutional connections, we are a member of Scotland Europa, which provides us with insight into policy and legislative development that is going on in Brussels. We have established links with the European Environment Agency, and we are actively developing a policy that will allow us to get international advice on international environmental policy and law. At the moment, we are working out how best we can access that advice, so that we can get international and European perspectives from outside Scotland. We are currently considering establishing a sub-committee or an advisory panel of our board that will be primarily focused on the keeping pace responsibility that we have, which demonstrates the attention and focus that we are applying to the issue. I was slightly hesitant to talk about that, as I believe it has not yet been discussed by the board. Jim Martin might want to say a little bit more about it.

Jim Martin: At our last meeting, the board was clear that we need to show leadership in this area. We agreed to set up a sub-committee of the board that will deal with the keeping pace responsibility and to consider developments in other international areas. We have only one other sub-committee of our board, which is the audit and risk committee, so that shows the priority that we are giving it.

11:15

We have also set out that the executive team is required to assess whether there is a keeping pace element in every area of the strategic plan. We have empowered the team to build relationships with institutions in Europe and with the people within those institutions, because that is how we can find out what is going on.

We are aware that there is a huge volume of legislation at the European level—never mind anywhere else in the world—that we need to keep track of. We will have a budget that will enable us to have around 24 people involved, so part of Neil Langhorn's task is to work out how, within his monitoring and analysis and horizon scanning areas, he can get the staff in place to enable us to do that or whether we need to have external input. We are looking at getting external input from those with expertise on the sub-committee advisory panel—not only board members—so that they can advise us on developments, where we should get information and how we can access information from countries that are not in the European Union, so that Scotland can take the best decisions in order not only to keep pace with the EU, but to become an international leader.

Fiona Hyslop: Thank you. I am more reassured by that second set of answers.

Mark Ruskell: Obviously, as an organisation, you have a range of different approaches to your work, and you spoke about working more at the informal resolution end of things by trying to resolve issues first. However, you also have the ability to mount a judicial review—or to attempt to—in some cases, so how do you maintain flexibility in staff and budget? An informal resolution would presumably require a lot less staff resource and a lower budget than mounting what could be a lengthy judicial review, and it is obviously difficult to predict when you might need to use each of those tools.

What are your general thoughts about budgeting, and how did you come to make the request that you made to the Scottish Government? Also, how does your organisation maintain the flexibility and teeth that are required to take whatever action you need to take as circumstances dictate?

Mark Roberts: Those are really interesting and challenging questions for me, as the chief executive. I could not agree more that, when you are a demand-led organisation, being able to be appropriately responsive to that demand is very difficult.

You used the example of a major judicial review. I imagine that that would take up a significant amount of our resources, but I envisage that going down that route would be very unusual and rare—I certainly hope that that would be the case. However, if it did happen, it would be challenging. In the immediate term, we would have to prioritise very quickly, and the same would apply if we had a significant spike in the number of representations that we receive from members of the public or organisations. Going back to a previous part of the conversation, we would have to triage those representations a bit more assertively if we had a significant number of them.

If that became a longer-term pattern, we would say to the Scottish Government, “This looks like a trend. We anticipate that it will continue, and we are going to need additional resources.” We would not be shy about going to the Scottish Government to say that. As you know, Mr Ruskell, part of the legislation requires us to say, in our annual report to the Parliament, whether we have sufficient resources to do the job that we need to do, and we will not hesitate to say if we feel that we need more resources because of demand.

That demand could come not only from external sources, but from the internal work that Neil Langhorn’s team are doing on monitoring environmental data and performance. It may also be self-generated, therefore, but we would justify and explain where that came from.

The Convener: Jim Martin wants to come in.

Jim Martin: I want to get something off my chest. Judicial review in Scotland is ridiculously expensive. We need to look at that at some point, because it is prohibitive for an individual to take a case to judicial review. Most of our public bodies have scope for individuals to do that, but they cannot afford to do so.

In an organisation like ESS, we have to be prudent in our budgeting, and we have to budget for the possibility that we may get there at least once. However, Government, the committee and others have to understand that, if it happened two or three times, we would, in order to be effective, need to spend that cash. I hope, therefore, that there would not, at any point in the future, be a barrier to our being able to access cash should that mean that we were going over our budget.

I am pleased to have got that off my chest, convener. Thank you.

The Convener: I am pleased that you have.

We will go back to Mark Ruskell.

Mark Ruskell: I am pleased, too.

I go back to my point on accountability and openness to the public. You have consulted on your initial plan and we have heard some of the feedback from that. Can you say a little more about how you are going to maintain that openness and accountability in the future?

Mark Roberts: As I said earlier, transparency in what we do is central to how we operate, and we will always strive to put out as much information as possible and make it available to people in a variety of ways.

On engagement, we have an active programme of engagement with a wide range of stakeholders in the non-governmental organisation community—not only the key public bodies such as SEPA and NatureScot, with which we engage very regularly, but the broader suite of relevant public bodies. For example, Transport Scotland is very relevant to the climate change agenda, so we want to engage with it, and we are also engaging with local authorities to explain our role and what we do and do not do. That programme of stakeholder engagement will roll on into the future. As I said in response to Ms Hyslop’s question, we are engaging at the European and international level as well.

With regard to accountability to the Parliament and to this committee, the chair of ESS wrote to the convener’s predecessor earlier in the year to give an update on our work. I hope that we will be able to continue to provide the committee with regular updates on our work, potentially every six months, in order to make our accountability to the Parliament and to this committee real, and so that you have regular sight of what our work is. If that is satisfactory to the committee, I would suggest that we continue with it.

Mark Ruskell: Yes—the relationship between the Parliament and ESS is very important.

I want to ask about the memorandum of understanding that you have with your counterparts in other parts of the UK and how developed that is at present.

Mark Roberts: We have recently completed and signed a memorandum of understanding between ESS and the Office for Environmental Protection, which operates in England and Northern Ireland. In Wales, there is an interim arrangement in place with the interim environmental protection assessor for Wales. That memorandum of understanding sets out how we will potentially collaborate with those organisations in the future.

We are in the process of setting up a three-way meeting between those organisations, which will, we hope, take place next month. Since I joined ESS, I have spoken to the interim assessor for Wales and to my opposite number in the Office for Environmental Protection, and those meetings will become regular.

For the sake of completeness, I note that we are also in the process of developing a memorandum of understanding with the UK Climate Change Committee, with which we will, no doubt, be working closely. I hope that that relationship is as fruitful as the relationship that our opposite numbers elsewhere in the UK have had with the Climate Change Committee.

Mark Ruskell: What do you expect to be on the agenda with your counterpart organisations across the UK?

Mark Roberts: In terms of the stages that we are at, we are all new organisations and one is an interim organisation. We have subtly different remits in terms of our responsibilities and our relationships with Government, so I think that we will talk through some of those broader governance and accountability issues.

We will, no doubt, talk about the specifics of investigations that are going on. As was discussed earlier in the meeting, the OEP currently has a major piece of work on combined sewer overflows in England and Northern Ireland, and we are interested in hearing about that. We will share the work that we have going on in relation to climate change and local authorities, which is a live investigation. No doubt, we will also talk about resources.

The Convener: The deputy convener has a question.

Fiona Hyslop: What does Environmental Standards Scotland see its relationship with this committee as being? What would you like it to be? How can we work well together to make sure that the key issues that affect Scotland's environmental standards are addressed? What would an ideal relationship with the committee look like for you?

The Convener: Jim Martin has indicated that he would like to answer that question. I will then bring in Mark Roberts, if necessary.

Jim Martin: I will answer first, just to make sure that Mark understands the line on that. *[Laughter.]*

I see our relationship with the committee as being a productive one. I do not see us being an investigative arm of the committee—I need to say that very clearly. Parliament has given us the job of determining what our priorities will be. The committee is clearly a very influential voice, and we will listen very carefully to you, but please do

not think that we are a body that you can instruct to investigate. I just wanted to say that out loud.

In relation to what Mark Roberts said about transparency, I hope that we can have discussions with the committee both on individual reports—for example, the air quality report that Mr Kerr raised—and at a strategic level. I hope that the committee will not seek to become an operational overlord for our organisation. In the past, I have found that, with public organisations and committees, the more frequently there is interaction between a body and a committee, the more the committee tends to get drawn into operational areas. For both our sakes, we need to avoid that. However, I think that the committee will be a place where we can come if we are having difficulties, and I hope that we will be a body that you feel you can come to when you have spotted something that we have missed or that you believe is a priority that we should address.

The Convener: Mark, has Jim laid out the answer sufficiently well that you do not need to add to it, or do you want to add something?

Mark Roberts: I do not think that there is anything that I can add to that.

The Convener: Fiona, are you happy with that answer?

Fiona Hyslop: Yes, indeed. I think that that was a very helpful insight into the perspectives of both the committee and Environmental Standards Scotland. Thank you.

The Convener: I am happy about that—and thank you, Jim, for saying that you are not an investigative arm of the committee. That is useful to know.

Jackie Dunbar: Good morning, panel. If it is okay with you, convener, I will leave it to you to say who should answer my questions, depending on who indicates, because I cannot see the panel.

What does a high-performing organisation look like to ESS? Do the witnesses believe that it is achievable for ESS to be a high-performing organisation, based on the current staffing levels and given the volume of representations that it is receiving?

The Convener: I will bring in Mark Roberts, because he partially answered that question before.

Mark Roberts: I think that a high-performing ESS will be an organisation that achieves what we have set out to do in our strategic plan, which is to ensure that we have a system of environmental law that actively protects and, ideally, improves the environment. Ultimately, that is the goal that we want to achieve. If we are able to contribute to

that, it will, in part, demonstrate that we are a high-performing organisation.

It is also really important that we are seen by the public to be responsive to their concerns. That public assessment and view of us is important.

I would also like us to operate in a way that means that, whenever possible, as Neil Langhorn described earlier, we work to resolve problems informally. If we need to use our powers, we will do that, as we have already demonstrated with our air quality reports, but, on the whole, we would like to work with and engage with public authorities to improve the system of environmental governance. However, I stress that we will not hesitate to use our powers where we see that as being necessary.

11:30

For me, those three strands demonstrate that we are a high-performing organisation. It would be remiss of me, as the accountable officer, not to say that we will do as much work as possible, and to the highest quality possible, within the budget that we have while recognising that we are still trying to work out what the long-term demand for resources will be. We are one year and three months into our existence, and I suspect that the world might look quite different in four to five years.

Jackie Dunbar: The world can look different in a matter of weeks just now, with the way that things are going.

I will ask about measuring your performance. What work have you undertaken to establish the baselines to measure the impact that you have on improving environmental quality and public health?

I am happy for anyone to answer. Mark Roberts is looking at Neil Langhorn.

Mark Roberts: I will start off and then pass to Neil.

That work is also in its infancy. The baseline evidence reviews that we undertook over the past year were the first stage in doing it. We will continue to work on it over the next year, especially within the priority areas that we have identified in the strategic plan. However, it remains work in progress and it will be critical for us to work with the various public authorities that we oversee and scrutinise to understand what data about environmental performance they have. Scotland is fortunate in having very good and publicly accessible environmental information, but there is, no doubt, more that we can access and work with.

Neil, is there anything that you would like to add to that?

Neil Langhorn: Within the strategic plan, we set out a framework for trying to measure our performance. It measures our inputs, our outputs and how those affect long-term environmental outcomes. As Mark Roberts mentioned, we can draw on the baseline evidence reviews as a snapshot of the state of the environment in Scotland at the moment.

The framework that we have set out envisages a long-term outcome indicator, but we will have to do a bit more work to work out exactly how we will achieve that. It is not an easy thing to measure, and the relationship between our work and outcomes is not direct, but we have tried to set out a framework for how we understand that will happen.

That gives us a baseline for our performance as an organisation. We have started to gather data on all the indicators that we set out in the annex to our strategic plan, so we have a baseline for all those and will be able to report on them annually through our annual report.

The Convener: That is the end of our questions. I thank the witnesses for taking part. In particular, I thank Mark Roberts for taking part in both panels. I thank Jim Martin and Neil Langhorn for coming along for this item.

We will produce a short report for the Parliament, which will then consider a motion to approve the strategic plan.

That concludes the public part of our meeting.

11:33

Meeting continued in private until 12:04.

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Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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