



OFFICIAL REPORT  
AITHISG OIFIGEIL

DRAFT

# Net Zero, Energy and Transport Committee

Tuesday 25 March 2025

Session 6



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Pàrlamaid na h-Alba

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**Tuesday 25 March 2025**

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**NET ZERO, ENERGY AND TRANSPORT COMMITTEE**  
**12<sup>th</sup> Meeting 2025, Session 6**

**CONVENER**

\*Edward Mountain (Highlands and Islands) (Con)

**DEPUTY CONVENER**

\*Michael Matheson (Falkirk West) (SNP)

**COMMITTEE MEMBERS**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

\*Monica Lennon (Central Scotland) (Lab)

\*Douglas Lumsden (North East Scotland) (Con)

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

\*Kevin Stewart (Aberdeen Central) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Dr Richard Dixon (Environmental Standards Scotland)

Gary Gray (Scottish Government)

Phil Leeks (Scottish Government)

Gillian Martin (Acting Cabinet Secretary for Net Zero and Energy)

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 March 2025*

*[The Convener opened the meeting at 09:17]*

### Decision on Taking Business in Private

**The Convener (Edward Mountain):** Good morning, and welcome to the 12th meeting in 2025 of the Net Zero, Energy and Transport Committee. The first item of business is a decision on whether to take item 5—consideration of the evidence that we will hear from Environmental Standards Scotland—in private. Are we all agreed?

**Members** *indicated agreement.*

## Subordinate Legislation

### Environmental Authorisations (Scotland) Amendment Regulations 2025 [Draft]

09:17

**The Convener:** Agenda item 2 is consideration of a draft statutory instrument. The current regulations were laid on 27 February and concern regulation of various activities by the Scottish Environment Protection Agency. These regulations are very similar to regulations that were laid on 27 November last year, which were withdrawn on 9 December at the request of this committee to allow additional time for scrutiny. Again, I thank the Government for doing that; it has made for better scrutiny.

The clerk's paper notes the evidence that we have heard on the matter. The Delegated Powers and Law Reform Committee has made no formal recommendations on the regulations. It has noted that issues that it raised about previous regulations have been addressed in the new regulations.

I welcome to the meeting Gillian Martin, Acting Cabinet Secretary for Net Zero and Energy, and her supporting officials: Carolyn Boyd, solicitor, Scottish Government legal directorate; Gary Gray, senior policy adviser, Scottish Government environment and forestry directorate; and Phil Leeks, senior policy manager, Scottish Government environment and forestry directorate.

The instrument is laid under the affirmative procedure, which means that it cannot come into force until the Parliament approves it. Following this evidence session, the committee will be invited to consider a motion to recommend that the instrument be approved. I remind everyone that the Scottish Government officials can speak under this item but not in the debate that follows.

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

**The Acting Cabinet Secretary for Net Zero and Energy (Gillian Martin):** Thank you very much, convener, for the invitation to attend today's session. I will take the next couple of minutes to put on record the context for this large and quite complex instrument.

The aim of the instrument is to amend the Environmental Authorisations (Scotland) Regulations 2018 to bring three existing environmental regulatory regimes—industrial emissions, waste, and water—into the framework provided by the 2018 regulations. That will provide an integrated regime for the four main environmental regimes regulated by SEPA in

Scotland. At the same time, the instrument will revoke various secondary pieces of legislation relating to environmental permitting in their entirety, greatly simplifying the statute book.

In 2017, the Scottish Government consulted on a single integrated authorisation framework for environmental regulation. Stakeholders were widely supportive of the basis of the proposal. The regulations then set up the framework and brought radioactive substances activities within its scope. The intention, at that time, was to bring other environmental regulatory regimes within scope in the future. At the start of 2024, the Scottish Government consulted on fulfilling that intention. Again, it had wide support. At the same time as adding those three activities to the framework, the instrument will change or introduce regulation for some sectors that were not covered previously.

Based on the recommendations in the “Review of the storage and spreading of sewage sludge on land in Scotland” in 2016, the instrument also amends the regulation of the sewage sludge to land regime.

The instrument will also bring three new activities within scope: non-waste anaerobic digestion; carbon capture, utilisation and storage; and smaller generators of electricity that are not currently regulated. The introduction of those three new activities will provide a level playing field in those sectors and ensure that environmental risks are appropriately managed.

The instrument also makes limited policy changes to the current regulation of environmental activities to improve the functioning of regulation. At this time, I am not extending that to cover other activities in which I know that the committee has an interest. Work is on-going to better understand emissions of ammonia from livestock farms and battery energy storage systems, the impact of any potential regulation and the best way to regulate those particular sectors.

The overriding purpose of the instrument is to simplify SEPA’s environmental regulatory regime. The changes that I have highlighted will maintain alignment with European Union legislation and ensure compatibility, and will improve the 2018 regulations. By streamlining SEPA’s regulatory regime, the instrument will contribute to the improvement and efficiency of Scotland’s public services.

**The Convener:** Thank you. The first questions are from the deputy convener, Michael Matheson.

**Michael Matheson (Falkirk West) (SNP):** Good morning. What environmental outcomes do we expect to achieve from the introduction of the regulations?

**Gillian Martin:** We are not saying that these activities are highly risky, but we are bringing them into scope so that they are regulated, that there are no issues and that there are guidelines. Obviously, the structure that exists for other sectors applies to them as well.

It is a long-held objective of the Government and SEPA to have an integrated authorisation. We are making the process and the regime simpler for people to follow when they apply for particular permits or notify SEPA of their activities. That will provide greater environmental protection and simplify and streamline SEPA’s regulatory functions.

SEPA will be able to take a more targeted and risk-based approach to regulation, focusing on the operators and activities that present the greatest risk. Having a tightly regulated landscape for all those sectors, so that operators understand the guidelines, frees up SEPA to interrogate some of the riskier activities to prevent environmental harm. I hope that the committee would agree that SEPA is largely there to prevent harm and limit the consequences of accidents, and that it should use its resources for that.

The fact that we are bringing some new activities into scope means that there will be the same environmental protections in relation to any risk that is associated with those new or currently unregulated activities.

On the whole, it is a case of making SEPA more efficient, giving it the space to be more proactive in taking targeted action and simplifying the regulations so that they cover more sectors. The result of all that will be that we will protect the environment.

**Michael Matheson:** I am looking at the timetable that includes key target dates for implementation of the regulations. The intention is that the new regulatory regime that is provided for by the regulations will be implemented by November this year.

**Gillian Martin:** Yes.

**Michael Matheson:** However, I do not see any key milestones relating to how we will ensure that the necessary preparations are made to allow SEPA to progress with the implementation of the regulations. Are there any milestones in advance of the target date in November for ensuring preparedness for implementation of the regulations?

**Gillian Martin:** Yes. As you said, the initial target date for implementation of the sludge to land regulations is 1 November this year. We have set up a governance group with SEPA for exactly the reasons that you have set out: we need to check that the milestones are met and that

preparations are made. The governance group includes key SEPA personnel to ensure that SEPA is on track to deliver all the changes by those dates, to implement the regulations effectively and to communicate them effectively to various stakeholders.

The group is meeting monthly, and its first meeting was a few weeks ago, so a meeting has already taken place. If the committee wants to see the group's terms of reference, we can provide them.

As I understand it, the delivery of digital services will be phased over the next year. The governance group will be looking at that aspect to ensure that the website pages are up to date, that the rules, advice and codes of practice are easily accessible, that the new conditions with which people will need to comply are available and that the new service manages the volume of applications as a result of the instrument. The target date for implementation of the first set of regulations—the sludge to land ones—is 1 November.

**Michael Matheson:** That is helpful. The part of the timetable that probably causes me the greatest level of anxiety is staff training and the transition involving the integrated authorisation framework products and services being handed over to the functional teams being completed by October this year. Does the oversight or implementation group have authority in relation to the stop-go of the regulations if it feels that there is a gap that will impact SEPA's ability to implement them in November?

**Gillian Martin:** I might need to ask my officials for a definitive answer, but the oversight group has been set up so that we actively monitor the situation. As I said, the group will meet every month, and we will get reports on staff training and our ability to meet the deadlines. I would hope that, if things were not going to plan, we would find that out early and be able to provide assistance or guidance, even if resources were required. I would hope that that would happen well ahead of a situation in which we had to think about stop-go.

Phil Leeks might want to add something.

**Phil Leeks (Scottish Government):** I do not have the terms of reference with me, but we can supply them to the committee. The idea of having the governance group is precisely to enable senior teams to inform the cabinet secretary of any concerns that need to be raised.

**Michael Matheson:** Who does the oversight group report to? Who would make the decision on stop-go?

09:30

**Gillian Martin:** The oversight group reports to me. Given that, I imagine that decisions would be taken as a result of advice coming to me about any issues that might arise. I am confident that that will not happen, though, because governance arrangements have been put in place. The group has met ahead of the regulations coming into force. Its members know that scrutiny and oversight will be regular and that actions will be associated with every meeting that takes place. A report will come to me about progress on that, too.

**The Convener:** I have some follow-up questions. First, in case we come on to discuss farming matters, I remind members and the cabinet secretary of my entry in the register of members' interests, in that I am a partner in a farm in Moray that covers about 500 acres. Therefore, I come into contact with SEPA on occasion—although not in any nasty way.

Going back to the deputy convener's comment, I have received representations that the computer system will not be ready, and that the forms will not be easy to populate for either previous or new applicants. Given that SEPA has had problems with its computer systems in the past, do you recognise that that could be an issue again? Are you prepared for it?

**Gillian Martin:** I was just checking with my officials that the previous applicants will be transferred to the new system by SEPA in-house. The information that I have about the build-out of the digital system is that the digital service will be in place to manage the volume of applications expected by the start date of 1 November. The new website pages will be published by 1 August. A number of registration-level authorisations are expected. The existing end-to-end digital services for those regimes will be updated between 1 November 2025 and 1 April 2026. The digital system is on track to be ready for new applications by 1 November, and the oversight group will monitor progress on that.

**The Convener:** All Governments have problems with computer systems, as we have seen in the past, and SEPA has been one of them. I will be interested to see how the oversight group responds. From the committee's point of view, once the system has gone live on 1 November it would be interesting to have an update from the cabinet secretary on how it is responding. I am sure that you would be happy to feed into that.

**Gillian Martin:** Although, of course, SEPA will be able to give greater detail on the operational aspects of what it is doing.

**The Convener:** The effectiveness of a tiered regime is all down to people knowing and understanding the general binding rules, so that

they can comply with them. Are you going to publicise those? How will you make them known? For example, I did not know that there were general binding rules on matters such as hot tubs. How will typical small businesses and households become aware of them? I do not have a hot tub, but, if I did, and there were rules regarding it, how would you let me know?

**Gillian Martin:** You have picked on quite a niche aspect by mentioning hot-tub owners. I do not know whether such owners could be in the list of stakeholder groups, but it is possible that, if SEPA has not already done so, it will have to communicate that. We would hope that hot-tub owners would dispose of their waste water responsibly, as they would with any waste water, and not put in it anything that should not be there that would cause harm to the environment. I imagine that if something in there were to cause such harm it would also cause harm to anyone sitting in the hot tub. Anyway, I digress.

The new website pages will be published on 1 August, and they will include all the guidance that is associated with the issue. The fact that there have been quite a few consultations means that stakeholders—I am not sure whether hot-tub owners are in that group—who will generally be using SEPA for the existing regulations and the new regulations have already fed into those consultations, so there is widespread knowledge that the changes will happen.

You make a good point: it is important that whenever SEPA changes anything operationally, or when new sectors come into regulation, it communicates the changes with stakeholders.

There have been stakeholder engagement sessions on the draft regulations with SEPA and some of my officials in the Scottish Government. It was made clear to those stakeholders that the existing GBRs under the water environment regulations were going to be brought into the regulations, and that some new GBRs were going to be added.

SEPA will be able to give more detail on its plan to communicate the new regulations to businesses to make sure that they are aware of them and to provide any kind of advice, as it does.

At Government level, we support Farming and Water Scotland, which has been very helpful in developing a range of fact sheets and collating frequently asked questions on changes to the binding rules that are being disseminated to stakeholders.

I hope that, in the round, that acknowledges that there has to be a communications strategy around this, which SEPA and others are undertaking.

**The Convener:** I am sure that those people with hot tubs will be rushing to find out what the general binding rules are for them, but my question is a serious one. Have you allowed for some money to advertise the changes and to promulgate them to people who might not necessarily pick up on them? For example, someone with a small holiday let might not know about regulations on hot tubs. What money has been put aside to make sure that everyone understands the GBRs? If they do not, the tiered system will not work.

**Gillian Martin:** SEPA has not requested additional money for that. It is able to do it within its existing budget.

**The Convener:** That will be an interesting conversation when we next have SEPA in. Monica Lennon is the next person to ask questions.

**Monica Lennon (Central Scotland) (Lab):** I do not have a hot tub, but I feel that I will have to ask more questions about that subject in future.

I want to ask about issues with odour from sewage sludge, because some stakeholders have raised concerns about the regulations. Can you clarify whether the regulations are designed to have an impact on odour issues, and if so, how do you anticipate that those changes will reduce odour complaints?

**Gillian Martin:** A great deal of work has been done on odour in general in the past decade, particularly as a result of a couple of reports that came to ministers more than 10 years ago. The committee will be aware that a lot of the odour is associated with waste water treatment. Scottish Water has been undertaking a comprehensive process to improve the waste treatment centres, and it is using new technologies that reduce odour and have better environmental outcomes.

I highly recommend visiting one of Scottish Water's new treatment centres, of which there are a few. They use a bacterial digestion process, so the waste water coming in is the only point in the process where you will smell anything. I have been to quite a few of those centres, as you can imagine, in my capacity as cabinet secretary. Very quickly, the bacterial digestion systems eliminate odour, so there have been a lot fewer complaints from anyone in the vicinity.

With regard to how the regulations relate to odour, if a member of the public detects any odour, they would initially, as always, contact their local authority. If the odour results from an activity of which SEPA has oversight, the local authority would get in touch with SEPA. By the process of reporting to the local authority, and the local authority then contacting SEPA, if there was excessive odour associated with any activity that



was in breach of any of the regulations, SEPA would be monitoring that.

The activities that are authorised under these regulations include sewage treatment, which is regulated by SEPA, with the Scottish Government providing guidance on it. The definition of “pollution” in the regulations includes

“the ... introduction ... of substances ... into air, water or land which may ... cause offence to any human sense”.

That includes odour.

We hope that, as a result of bringing all those aspects into one instrument, any new activities that may have odour associated with them are now brought within the scope of the regulations and should not cause excessive offence to the senses, as the regulations set out.

As I said, however, that is happening not just as a result of the regulations. Targeted work has been done on processes around sewage in particular to reduce odour, largely as a result of investment by Scottish Water in its waste treatment works, but also resulting from the rapid acceleration in technology associated with the treatment of sewage.

**Monica Lennon:** So the intention is, through the regulations, to reduce—it is hoped—the impact of odour, which would lead to a reduction in complaints, but if there are complaints, members of the public should go to the local authority in the first instance.

**Gillian Martin:** I imagine that they would, in the first instance. If people have the knowledge to enable them to associate the odour with a specific activity on a particular site—for example, if it was on the land, and they contacted SEPA—they will obviously not be turned away by another body. Indeed, if there was excessive odour associated with any of the sites that are operated by Scottish Water, they could contact Scottish Water. In a general sense, however, regarding the environment in someone’s own local authority area, they would contact the council in the first instance.

**Monica Lennon:** It is important to get clarity on that. We know that some local authorities have queried it and asked how the new approach would interact with their role in dealing with odour nuisance complaints. For example, East Ayrshire Council has suggested that revised guidance should be provided to clarify roles. There are definitely questions about the interaction between SEPA and local authorities in relation to statutory nuisance complaints.

**Gillian Martin:** I am just having a little confab with my officials around that.

If councils are looking for specific guidance on the matter, we could produce that in order to make it clear.

**Monica Lennon:** Okay, so you recognise that additional guidance is perhaps required.

**Gillian Martin:** Of course. We do not want any local authority to be in any doubt about what they have to do if they receive complaints. It would be fairly straightforward to provide guidance to all 32 authorities.

**Monica Lennon:** Okay—thank you.

**The Convener:** The next questions are from Mark Ruskell.

**Mark Ruskell (Mid Scotland and Fife) (Green):** Cabinet secretary, I want to ask you specifically about the change in the cadmium threshold in relation to sewage sludge. I believe that that has changed since the regulations were originally introduced in November. I want to understand what the change means in practice with regard to islands, grasslands and other areas where there are exemptions for higher cadmium thresholds. Can you explain that, please?

**Gillian Martin:** It has been recognised that cadmium can occur naturally in certain areas, so there have to be exemptions in place because of the geology of a particular area.

You mentioned islands. Many islands will have naturally occurring cadmium in their soil as a result of their geology. Exemptions could be put in place for that. The draft regulations will reduce the maximum concentration of cadmium that is allowable in soils for spreading sewage on land. The reason for that is that there is evidence of cadmium uptake in wheat, for example. Where cadmium levels are above the maximum concentrations, it is taken into growing wheat.

09:45

Scottish Water and SEPA identified that reducing the maximum permissible concentration of cadmium in soils could lead to unintended consequences in areas where there are naturally occurring levels of cadmium; in island situations, there can be limited options for the disposal of sewage sludge, and we do not want a situation where an island community cannot dispose of their sewage sludge within their geographical area. That would be an unintended consequence of reducing the maximum permissible level, given their geology. So, we have drafted the regulations to allow SEPA to provide an exemption for those reasons.

You mentioned grassland and the fact that it is not used for growing crops for human consumption. There could be another exemption

there. SEPA has determined that there may be exemptions for grassland, if that is the only thing that the land is used for.

**Mark Ruskell:** Will the exemptions be considered on a case-by-case basis? Say there was a situation where there was an arable area on an island, and there were, therefore, concerns about cadmium uptake in crops, could SEPA still say, “Well, actually, that’s not an appropriate area to be spreading sewage sludge,” and therefore rule against it, or is it that, if you are on an island, it is fine to spread sewage sludge?

**Gillian Martin:** My understanding is that exemptions will be considered on a case-by-case basis.

**Mark Ruskell:** Okay. That answers the question.

**The Convener:** Just to push a little more on the subject, one of the ways that sewage sludge used to be used was as fertiliser for trees and young grain crops. It was in the form of pellets and was applied that way. That seems to have fallen by the wayside. Is causing the trees to grow quicker using sewage sludge something that you will look at in the future to help us lock up carbon?

**Gillian Martin:** Again, you have touched on something that is quite niche, for which I do not have a specific answer. I need to find out more about that, but SEPA would be able to advise on whether it is something that it wants me to look at. It is something that I will need to take away, convener.

**The Convener:** Okay. I will hand back to Monica, who has more questions on sewage.

**Monica Lennon:** I will ask about emerging contaminants, such as microplastics and forever chemicals, that are in sewage sludge and how they might affect human health and the environment. It is fair to say that there is still a lot that we do not know, so we need to get that knowledge and robust evidence. In that context, we have heard from stakeholders about the safe sludge matrix being out of date. Can you give the committee an update today on what the Government has been doing to improve that understanding and evidence and on what the timescale is in relation to the safe sludge matrix?

**Gillian Martin:** I will come to the safe sludge matrix in a second. The committee is aware that the Scottish Government wants to keep pace with EU regulations, and the approach to this issue is no exception in that regard. At the moment, the EU is considering new legislation on sewage sludge and on the wider circular economy. We are keeping up to date with how that is going and what it could mean for us. As a result of deliberations at the EU level, modifications to the urban waste

water treatment and sewage sludge directives might be considered.

From what I hear, the EU is consulting on the matter over the summer, and we will be keeping a close eye on that. It is potentially looking to introduce new legislation by the end of the year, which could have an impact on us. The EU is doing a great deal of work on that.

The matter has been looked at by the Scottish Government, with partners, including, in particular, Scotland’s Rural College. You are right that there are new contaminants as well as existing ones, which we must always be aware of. We have left the EU, but there are regimes in place in the United Kingdom of which we need to be mindful.

I will bring in Phil Leeks on the safe sludge matrix.

**Phil Leeks:** Sorry—it should be Gary Gray.

**The Convener:** If it is to do with sewage sludge, it is you, Gary.

**Gillian Martin:** Gary is in the weeds of this, so I will hand over to him.

**Gary Gray (Scottish Government):** The 2016 review recommendations included the incorporation of certain elements of the safe sludge matrix in legislation. We have discussions—albeit not regular discussions—with the UK Government about the safe sludge matrix, but certain elements have been brought into the regulations, as recommended by the review.

**Monica Lennon:** Thanks for that.

One of the recommendations in the 2016 review was that planning guidance on the use of sewage sludge in land restoration should be reviewed. I do not think that that has happened yet. Can you give an update?

**Gary Gray:** We will get the framework into place and the regulations up and running. As the cabinet secretary said, there is an advantage to bringing sewage sludge into the framework. The previous regulations—the Sludge (Use in Agriculture) Regulations 1989—were quite passive and gave stakeholders a lot of elbow room to operate in. The framework brings sewage sludge into SEPA’s scope, so that it can issue permits and properly enforce measures in response to any illegal action, or actions that are not being done properly.

As the cabinet secretary said, the list of contaminants is under review by the EU. We will take note of the consultation that comes out in the summer, and we will take appropriate action following that.

**Monica Lennon:** I will press you a little bit more on that. Although I appreciate there are a lot of different moving parts, particularly in relation to EU

alignment, I would like to get a bit more clarity about when the recommendation, which dates back to 2016, will be implemented.

**Gary Gray:** As I said, the decision was that, once we get the regulations up and running, it is a matter of us looking at what guidance is required with SEPA, or making changes to planning, if any are required.

**Gillian Martin:** From my point of view, it is important, first, that the regulations are in place, that everyone knows what they are and that continuous work is done on the matter. I come back to my earlier point that new contaminants could be identified, and there has to be consistent monitoring of the sort of things that have been used and are appearing in sewage sludge. This is not just a one-time thing; it is a continuous piece of work.

**Kevin Stewart (Aberdeen Central) (SNP):** Good morning. I turn to the subject of anaerobic digestion. Concerns have been raised by some anaerobic digestion stakeholders that the regulations will threaten the viability of non-waste anaerobic digestion plants, because of the retrofitting that they might have to do on such sites to comply with the licence conditions. A number of the folks who have concerns are those who use distillery by-products in anaerobic digestion. What does all of that mean? Can you give us assurances that those folks have nothing to fear from the changes to the regulations? How will you monitor all of that as we go forward?

**Gillian Martin:** I have a couple of things to say in response to that. I will deal first with the questions around the on-going discussions between the whisky industry and SEPA.

Effectively, in order to create a level playing field, we are bringing AD plants that use non-waste feedstocks into the scope of existing regulations on those that use waste feedstocks. Operators who use waste feedstocks are used to the existing regulations. SEPA is in discussion with non-waste AD operators—it is communicating and engaging with them. As I said, that communication is important. Due to the simplification of the regime and the digital interface for applications, there will be heightened communication with the sectors that will be covered by the regulations.

Regardless of whether feedstocks are classified as waste or non-waste, there is always a risk in the operation of an AD plant that contaminants could get into the environment, which is why the regulations are being tightened to level the playing field. The Government has not reclassified AD feedstocks; it has used the definitions from the Pollution Prevention and Control (Scotland)

Regulations 2012 and waste management licensing.

You are right that there have been stakeholder concerns. There is anxiety about having to do something new, and anything that stakeholders have not had to deal with before will present an administrative challenge that they would rather not have to manage. SEPA will phase in the changes in recognition of the fact that some operators have not had to comply with the regulations before—obviously, that is an operational aspect that SEPA can discuss—and there will also be flexibility about the appropriate level of authorisation. For example, a waste AD plant in which the activity threshold is more than 100 tonnes would have to apply the best available techniques standard. Everything will be proportionate to the size of the plant. SEPA is mindful of the concerns and is engaging specifically with the whisky industry, because a lot of anaerobic digestion is associated with its stock.

Under the regulations, non-waste and waste feedstocks that are used in anaerobic digestion will have the same rules, so there will be no risk of contamination—or the risk of contamination will be monitored, identified and regulated.

**Kevin Stewart:** I recognise the ambition to create a level playing field, but sometimes, when regulations come into play, that does not happen. I am sure that you will monitor that to the nth degree.

I know that you recognise the issue of the distilling industry because of your constituency interests. The fact that those AD sites have not had to be authorised and are not regulated to the same degree has allowed for innovation, and I am sure that we would all want that to continue in the industry. Are discussions taking place on the potential impact of the proposed regulatory changes on distilleries that use AD? Will SEPA take all that into account as it gradually begins to regulate? This is a very sensitive area, and I do not think that anyone would want to stop the innovation that is going on. Could I have your comments on that?

10:00

**Gillian Martin:** First, I recognise that, in the way in which it powers its distilleries, the Scottish whisky industry, in particular, is one of our greatest innovators when it comes to bringing down production emissions. It has been one of the first movers in the use of anaerobic digestion technology, and the associated biogas, as well as hydrogen technology. We need to applaud that, and we do not want to put in place anything that will limit or diminish that or lead us not to recognise the industry's impact on reducing the

production emissions arising from the making of whisky, or the innovation associated with it.

That is happening not just because the Scottish whisky industry wants to produce the best whisky available for export to the whole world in terms of its taste, provenance and whatever, but because it also wants to be one of the first movers in the food and drink industry in low-carbon production. That is very important to them, and to me, and it is why I am interested in and will be keeping a close watch on the discussions that SEPA will have with the Scottish whisky industry. It is for exactly the reasons that you have highlighted, Mr Stewart.

**Kevin Stewart:** I am not going to bite on the hydrogen prompt that you gave me, as I would have done normally.

My final question is a very simple one. You say that you are going to take a great interest in the issue, and I think that you recognise that the committee is going to take a great interest in it, too. Therefore, I ask that, as you monitor the situation, you keep committee members up to date on how we are dealing with it, considering the sensitivities.

**Gillian Martin:** Yes, I will.

**Kevin Stewart:** Thank you very much.

**The Convener:** Cabinet secretary, you said that SEPA was going to phase the changes in. Given the importance of the issue—you have based your answers on that—how long will that phasing-in process take? Will it be one year, two years, three years, or four?

**Gillian Martin:** Again, that is operational stuff for SEPA, convener. [*Interruption.*] Oh, I do have that information.

**The Convener:** I would be surprised if you did not.

**Gillian Martin:** The non-waste AD regulations will come into place on 1 April 2028. That means that, in effect, there will be just under two years of working with the sector to get operators content with what is required.

**The Convener:** You almost did yourself down by saying that you did not have the information when you did.

**Gillian Martin:** Well, I did.

**The Convener:** Phil Leeks came to your rescue. Thank you for the answer. The next question is from Michael Matheson.

**Michael Matheson:** How many non-waste AD plants do we have in Scotland?

**Gillian Martin:** I definitely do not have that information in front of me just now, but we can do an assessment of that. SEPA will be aware of the

exact number, and we can certainly get it to the committee, but I do not have it in the information that is in front of me. I am looking at my officials, and I do not believe that they have it either.

**The Convener:** So Phil cannot come to the cabinet secretary's rescue.

**Gillian Martin:** No, I am afraid not. It was too good to be true.

**Michael Matheson:** I must confess that I am somewhat surprised by that. I understand that there are more than 80 AD plants in Scotland; we are bringing in regulations to cover the non-waste AD plants, but at this stage we do not know how many there are. Do we know that SEPA does know that?

**Gillian Martin:** Yes, because it will be in touch with them.

**Michael Matheson:** But they are unregulated at the moment, so they will not necessarily be in contact with SEPA.

**Gillian Martin:** My understanding is that, ahead of the regulations for non-waste anaerobic digesters being put in place, we will put them out for consultation, but SEPA is in touch with those whom the regulations will affect. If you want detail on that, I can certainly get it from SEPA, and I can write to the committee with it. I am happy to do so, even though I do not have the exact figure in front of me right now.

**Michael Matheson:** That is helpful. We have had evidence from stakeholders that, in their view, there was no meaningful consultation with them on the regulations.

**Gillian Martin:** If that is the feedback from anaerobic digestion companies and operators, I will take it away and put it directly to SEPA myself.

**Michael Matheson:** Okay—that would be helpful.

To pick up on the convener's point about what phasing in looks like, I would like some clarification regarding non-waste operations that are currently unregulated and will be covered by the new regulations as of 1 April 2028. The committee raised the matter with the Government, which stated in response:

“there may be additional costs for businesses to bring their facilities into compliance.”

With the phasing in taking place over approximately the next two years, a business will be facing significant costs associated with the introduction of the regulations, which they were previously not covered by. Over two years, it might actually make a business financially unviable if the costs are significant.

Given that we might not know as yet what the actual financial costs on some of these businesses will be, what flexibility is there in that regard? Some may come back with seven-figure or eight-figure sums. What scope is there to say, “Well, we recognise that it will take you more than the next 18 months or two years to raise the capital and to make sure the business is financially viable”, and offer flexibility so that a business has the time that it needs to make that type of capital investment?

**Gillian Martin:** I would hope that there would be flexibility. SEPA is working on how it is going to bring forward the regulations and implement the conditions. SEPA will be watching today’s committee session, so my message to it would be that we do not want to put anyone out of business.

It is about good will. If businesses want to comply with the regulations—retrofit might be required in some areas—but there is a financial cost associated with that, and it is estimated that complying will take them beyond the specified time limit, I would not want a situation in which they were in breach. I would want SEPA to work with them to get them up to the standard that they have to meet under the regulations in a way that is flexible and collaborative. That is my message. I will also take that point away from this session, and it will form part of the discussion at the next meeting of the group that has been set up; I will put that question to it.

Retrofit may be required in some areas, although I am hopeful that it would not be substantial. I would hope that the organisations that are involved in processing non-waste materials have the highest standards. As somebody who used to be involved in the oil and gas industry, I know that where there is leakage of anything, there is always a cost to business. Businesses do not want to leak product and have high emissions—they want to act responsibly, not just for their environmental credentials but for their bottom line. Any leakage of anything is waste and is money down the drain.

Where there is a case in which there may be substantial costs and time associated with bringing something up to the standard that SEPA wants, I would be hopeful that the organisation would—and I will put it to SEPA directly that I want it to—work with the business on that, and be flexible when necessary.

**Michael Matheson:** That is very helpful, cabinet secretary, and I am sure that some in the industry will find that supportive.

My final question is that, although the regulations will be implemented from 1 April 2028, when a business is required to make significant retrofit amendments to its existing facility but cannot meet the financial costs of that within the

timeframe, will there be the flexibility for it to have an extended period to allow it to continue and to make the required amendments?

**Gillian Martin:** That would be more than sensible.

**Michael Matheson:** Is it the expectation that SEPA will allow that?

**Gillian Martin:** There is a more general point here. We want to see innovation in energy generation and a reduction in the emissions associated with hydrocarbons. Anaerobic digestion is a way in which we can decarbonise a lot of our processes—the whisky industry has been mentioned. We should be as supportive as possible on that.

**Michael Matheson:** Thank you.

**Douglas Lumsden (North East Scotland) (Con):** I want to briefly follow up what the deputy convener said, because I am also concerned that existing plants might have to be retrofitted, which could be expensive and completely change the business case. I am all in favour of having a level playing field, but we have to be careful that we are not moving the goalposts. Is there a case for having a dispensation in place for existing non-waste AD plants and then having regulations in force for any new plants that come on board?

**Gillian Martin:** I would say no. Heaven forbid that existing plants are polluting, as I am hopeful that they are not in any way. I come back to my earlier point that any plant that is polluting is probably leeching money as a result.

The regulations will be put in place over a two-year period to allow businesses the flexibility to get ready for them. Providing such wholesale dispensation would not be a level playing field at all; you would not expect to see that in the regulation of any other type of energy production. I am not sure that it would be the right way to go.

I come back to Mr Matheson’s point. Where a healthy business is generating a profit and is one of the businesses that is helping the industry to decarbonise, we want to do everything to support it. We would not want any such business to go out of business. If there are issues with any particular plant coming up to the standard, we have to look at that on a case-by-case basis and allow some flexibility. That is obviously an operational matter for SEPA, but it will be listening to what has been said today.

We do not want a burgeoning sector—and an important sector for our net zero goals and for the decarbonisation of industry—to be put out of business as a result of any regulation.

**Douglas Lumsden:** I totally welcome that flexibility, but this feels like retrospective

regulation. I am concerned that businesses have made decisions on the basis of existing regulations and, as those change, they might have to retrofit and spend more.

**Gillian Martin:** I do not agree that this is retrospective regulation. Regulations come into place when issues come up that need to be looked at. Consider vaping, for example. That is an innovation that has happened, but the UK and Scotland are now looking at rules associated with the harms that it causes.

So, this is not changing the goalposts; it is regulating and making sure that we have the tightest environmental and health controls on everything that is possible. It is not regulation for its own sake.

**Douglas Lumsden:** If someone raises a case saying that they had made a financial decision and that the rules have changed, so they will now have to spend a lot more money to operate—I do not know how much that would be; it might be nothing or it might be a lot—are you confident that, legally, that would be okay?

10:15

**Gillian Martin:** I hope that my message would be that SEPA should be working directly with that particular company and ensuring that it assists it in every way to come up to the required standards.

**Douglas Lumsden:** Thank you.

**The Convener:** Mark Ruskell has a question on this issue and then some follow-up questions on another subject.

**Mark Ruskell:** I am struggling to understand the difference between waste and non-waste AD. I used to live next to a whisky distillery, and what came out of its back end was definitely waste, to all intents and purposes. Why is there a distinction between waste and non-waste? Is it not the case that those who do anaerobic digestion with waste already have the technology that those doing non-waste anaerobic digestion could just pick up and implement?

**Gillian Martin:** It is for SEPA to decide what is waste and what is non-waste. However, I might have to bring in my officials, because I am not an expert on feedstocks and what is categorised as waste and non-waste. If Phil Leeks wants to jump in and say anything, he will be most welcome.

**Mark Ruskell:** Well, maybe if there is more information—

**The Convener:** I just want to make it clear that a lot of us view what comes out of distilleries as non-waste. The draff is used for feeding cattle; therefore, it is food waste, as it is being used by other ruminants.

**Mark Ruskell:** I would not eat what was coming out of the distillery that I used to live next to, to be honest, nor would I want to smell it.

Perhaps I can reference the brewery sector here, because, as I understand it, this is about trying to create a level playing field with brewing. Is that right?

**Phil Leeks:** Very much so. On the original question whether something is a by-product or whether it is waste, I should point out that the definitions in the instrument have not been changed. We have retained the existing definitions. Operationally, it is for SEPA to determine whether something is a waste product or a by-product, through engagement with the relevant sectors.

**Gillian Martin:** I hope that that clarifies the matter, Mr Ruskell.

**Mark Ruskell:** But this is about creating a level playing field with the brewing sector. Is that correct? The brewing sector is covered by the waste aspects, even though it is still using a natural feedstock.

**Phil Leeks:** It comes back to the classification and whether the feedstock has been defined as waste through the regulatory authorities or has been classified as a by-product. Those are defined in the pieces of legislation that we have brought across from the previous waste regime. I am not an expert in the area, though—I would have to go back to SEPA on that.

**Gillian Martin:** I have in front of me some definitions and the schedules that they relate to. Waste feedstock permit level activity is set out in proposed new schedule 20 to the 2018 regulations, as inserted by schedule 11 to the amendment regulations, while permit level activity for non-waste feedstock is set out in proposed new schedule 26 to the 2018 regulations, as inserted by schedule 17 to the amendment regulations. SEPA determines the environmental limits. I hope that that is helpful.

I am trying to give you as much information as possible, but I think that SEPA is, as Phil Leeks has said, the determining body as to whether something is waste or non-waste. That is the discussion that it is having at the moment with the Scotch Whisky Association.

**The Convener:** I will be pushing SEPA, if it is listening in, to answer that question, and I am sure that you will bring it to its attention, too, cabinet secretary.

Mark, you have some questions on another subject. I want to give you a couple of chances to develop them.

**Mark Ruskell:** Something that is not included in the regulations is ammonia emissions. My understanding is that the large industrial point-source emissions of ammonia from pig and poultry units are covered by the PPC regulations. They are already covered as industrial units under EU law, and under our laws, too.

However, there is an issue with other, larger collective sources of ammonia, which are not covered by any kind of regulation at all. As I understand it, the Government has, with those sources, decided to go down the route of best practice and codes of conduct with the industry. Having made that decision last year, can you tell us what progress is being made on tackling that greater source of ammonia emissions, which is causing air quality problems, particularly in rural areas?

**Gillian Martin:** A number of pieces of work are being done on this particular issue, but an awful lot more work and research still needs to be done. For example, Scotland's Rural College is developing tools for land managers to reduce ammonia emissions; the work involves a process of communication with land managers so that we can get good practice on this, and I want that to be developed and disseminated among land managers before we consider anything associated with regulation.

The project will also provide us with evidence to demonstrate the benefits of mitigation measures on commercial farms and to support the identification of future regulation that might have to be introduced. The EU is looking at ammonia emissions, too; again, we will keep a watching brief on that with regard to alignment, but by the end of next year, the EU will have assessed whether there is a need for further regulation of the ammonia emissions associated with livestock. Of course, we are not waiting to see what happens in the EU, as important as that is—we are doing work in that area with the agricultural college.

Obviously, we want best practice on reducing ammonia emissions to be followed voluntarily before we consider whether anything might need to be done through regulation. That work is going on at the moment.

**Mark Ruskell:** In the last cleaner air for Scotland strategy, which was published in 2021, there was a commitment to bring in that code of practice. Is that work now really quite behind schedule?

**Gillian Martin:** Not really. The reduction of ammonia emissions has been incorporated into existing codes of practice; for example, there is the "Prevention of Environmental Pollution From Agricultural Activity". Instead of having a completely different document and code of

practice, we have brought ammonia emissions into an existing code of practice. That work has been done.

**Mark Ruskell:** If, in the future, the EU decided to change that threshold and bring more intensive livestock units under regulation, and the Government decided that there was a strong evidential basis for such a move to do with air quality and everything else, what would be your next steps? At the moment, it seems that the focus is on a firm voluntary approach with a code of practice. If the EU were to move towards widening the scope of regulations, would the Government engage early on with the agriculture industry on what the best-available technologies would be? They might even include anaerobic digestion, so the industry might need more time to think about how it would implement them. Does the Government have a commitment to move forward in that respect?

**Gillian Martin:** As I have indicated, we are not waiting for the EU to decide something and then saying, "How do we figure out the alignment bit?" The SRUC is doing work on good practice, and it has a route into working with land managers in order to evidence what is happening at the moment, the acceptance of mitigation measures and how widespread that good practice is. That will inform what we would do, if the EU were to decide to bring in regulations on that. Obviously, we will assess that at the time.

**Mark Ruskell:** If the code of practice does not work and does not bring down ammonia emissions, will you regulate?

**Gillian Martin:** I am hopeful that it will make a difference. The SRUC has a very good reputation in the work that it does with land managers to bring forward innovative practices that are good for the environment.

**Mark Ruskell:** Okay.

**The Convener:** As that brings us to the end of our questions, we move to the next agenda item, which is a debate on motion S6M-16752. Cabinet secretary, I am sure that you will want to move the motion, but do you want to speak to it?

**Gillian Martin:** I will just move it, convener.

*Motion moved,*

That the Net Zero, Energy and Transport Committee recommends that the Environmental Authorisations (Scotland) Amendment Regulations 2025 [draft] be approved.—[*Gillian Martin*]

*Motion agreed to.*

**The Convener:** The committee will report the outcome of the instrument in due course. Is the committee content to delegate authority to me as

convener to approve the draft report for publication?

**Members** *indicated agreement.*

**The Convener:** I thank the cabinet secretary and her officials, and I briefly suspend the meeting to allow a changeover of witnesses. We will start again at 10:30.

10:25

*Meeting suspended.*

10:31

*On resuming—*

## **Environmental Standards Scotland (Annual Report and Accounts 2023-24 and Future Priorities)**

**The Convener:** Welcome back. Agenda item 4 is an evidence session with Environmental Standards Scotland to consider its latest annual report and accounts. It is also an opportunity for a wider-ranging discussion about all of ESS's main challenges and priorities.

I welcome from Environmental Standards Scotland Dr Richard Dixon, acting chair, and Mark Roberts, chief executive. Richard, I notice that you are still the acting chair, but I congratulate you on your appointment as chair. We look forward to working with you. I understand that you would like to make a brief opening statement.

**Dr Richard Dixon (Environmental Standards Scotland):** Thank you very much for your congratulations. The appointment is going through security checks, which we hope will be finalised soon.

Thank you for the opportunity to speak to the committee. I will start with a quick overview of the activities that ESS has carried out in the past year.

Environmental Standards Scotland is coming up for three and a half years old, and we think that we have firmly established ourselves as an essential part of the system of environmental governance in Scotland. In the past year, we have produced three major reports: on sewer overflows, on marine litter and on the management of soils. We are in discussion with the Scottish Government and the relevant public bodies about all three of those reports.

We continue to get representations from the public, communities and organisations. In the past year, we have resolved six cases through discussion with public bodies, including one on the impact of wrasse fishing on protected birds and one on making the procedures for applying for bathing water designation simpler and the decision-making process more transparent.

We have two live investigations—one is about the management of fish stocks to the west of Scotland and the other is about the classification and designation of specially protected areas for protected birds. We have another 15 investigations that are in development. In the past year, we have responded to 12 consultations and to the conclusions of the Scottish Government's rather lacklustre review of environmental governance.



The Natural Environment (Scotland) Bill has been introduced, and we very much welcome the proposals for statutory nature targets and for a new scrutiny function, which ESS would deliver. As a result of our improvement report and the Scottish Government's improvement plan on local authority climate change duties, which the committee discussed in the autumn, it is likely in the medium term that ESS will also be asked to carry out a scrutiny function for local authorities' climate change plans and reports. That means that two scrutiny functions may well be coming to us.

Given the importance of reversing the loss of nature and of tackling the climate emergency, we think that it is really important that those scrutiny functions are independent of Government, so that they report to Parliament, as we do, and not to ministers; that they are effective; and that they are properly resourced, so that they do not take away from other work that we are supposed to be doing.

A big bit of work for ESS this year, in particular for the board, is the creation of our new five-year strategy. We plan to set out a number of priorities to guide our work, and we are aiming to make the biggest difference that we can on the most important issues. We will consult stakeholders over the summer on a draft and we will lay the final draft in Parliament in October for members' thoughts and approval.

I hope that that is a useful overview of the broad range of our work—thank you for listening. We are very happy to answer any questions that the committee may have.

**The Convener:** As you would expect, there are a few questions. Before we get into them, I remind members and those who are watching that, as a farmer, I have an interest in a family farm on Speyside; it is adjacent to the river, and we extract water from the river for irrigation. I am also a member of the Spey Fishery Board and I have an interest in a wild salmon fishery, which may be important when we come to talk about water abstraction. I declare all those interests at the outset.

I have a quick question on all the work that is going on. You mentioned that you follow up on your reports. How do you do that, and how do you keep track of how the Government is responding? We have heard about what you have done, but I am not quite seeing what the Government is doing in response in every case.

**Dr Dixon:** That area of work is increasing, and the board regularly asks the team, "Have you got enough resources to do this?" When we come to an agreement with the Scottish Government or another public body to say, "Over this period, you will do these things," we have a set of activities

that we regularly check on to see whether the work is on track. If it is not on track, we have a conversation, or that public body may volunteer a conversation and say, "Oh, sorry—we're running two months late; is that okay?"

We follow up on quite a big area of activity. We have had to have quite tough conversations when things have not been delivered as they were specified in the agreement between ESS and the public body, but all those situations have been resolved. It is a reasonable process but, as you say, it is quite a big area of work, and we have recently realised that it is not very visible. If you go to the ESS website and look up the thing that we did on wrasse fisheries, you can see that the situation was resolved and that there is a letter of decision that says what is going to happen, but you cannot really track that there is follow-up activity and that the things that were promised are on track. We are going to do a bit more to make that visible.

**The Convener:** If we look ahead at some of the areas in which you will have to do more work next year, I take it that resources are fine—that there is plenty of money and you are not stuck for staff to make that work.

**Dr Dixon:** I am sure that Mark Roberts will have a view on that. We have already written to the committee this year to say that the proposed budget settlement works for us in terms of the work that we have to deliver. New duties are coming—for instance, the scrutiny role that arises from the Natural Environment (Scotland) Bill will require new staff and extra resources—and that needs to be built into a future budget, although probably not this year's budget.

Of course, we will come to tell the committee every year whether we think that the budget is adequate. You will understand that, as in every other public sector body, the wages bill is going up by something like 3 per cent a year so, if our budget is flat, it is not long before we will start to have a problem with delivering our core functions. We would expect to have that type of conversation with the committee every year, so I thank you very much for asking the question.

Does Mark Roberts want to say something?

**The Convener:** Mark ruffled his brow when I said that there was enough money, so I am interested in hearing his comments.

**Mark Roberts (Environmental Standards Scotland):** It is fair to say that we are having to start making choices about the work that we will do over the next year. One characteristic of ESS is the breadth of its remit and the relatively small size of the resources and the team that we have available. In the coming year, we will be looking, for example, at questions around river basin

management planning and invasive non-native species. In the marine environment, we have a piece of work on-going to look at the implications of disturbance to the sea floor for good environmental status.

However, we are having to be a bit more selective when there are pieces of work that we would like to do but we are a bit too stretched with what we are already doing. We would rather do things in detail and in depth than do anything too superficial.

Richard Dixon referred to the two on-going investigations, which I expect to come to a conclusion over the next few months. We are in the latter stages of considering other investigations that we will initiate. I would be doing my team a disservice if I did not say that it is running pretty hard and things are running pretty tight. Nonetheless, we have scoped the work and we have plans, in our business plan for next year, that are appropriate to the resource that we have.

**The Convener:** Will you remind everyone how big your team is?

**Mark Roberts:** There are 26 people.

**The Convener:** Are you suggesting that that number might have to grow substantially?

**Mark Roberts:** The new duties that are proposed under the Natural Environment (Scotland) Bill mean that an additional function will be asked of ESS. As the bill goes through parliamentary consideration, I am expecting there to be discussion about the resources that ESS needs.

As Richard Dixon mentioned, we are likely to take on responsibility for scrutinising local authorities' reporting on climate change duties, which will start in a couple of years' time. That is an additional task that ESS will be taking on, and we will therefore be seeking additional resources for it.

**The Convener:** You must have a forward-facing plan. How many people do you think will be in your team in three years' time?

**Mark Roberts:** I would estimate somewhere in the upper 30s.

**The Convener:** The upper 30s—okay.

The next questions are from Douglas Lumsden.

**Douglas Lumsden:** ESS received some criticisms last year in the "Report on ERCS's first 11 representations to Environmental Standards Scotland" by the Environmental Rights Centre for Scotland. They include criticisms that you are taking too long following representations to decide whether to investigate and that you are relying exclusively on using informal resolution rather than

exercising enforcement powers such as issuing compliance notices. What is your reaction to that criticism?

**Mark Roberts:** To take the second point first, on our approach to enforcement, the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, which set up ESS, requires us to take an approach that tries to resolve matters informally wherever possible. Our first strategic plan, which we are coming towards the end of, explains how we are going to do that.

It is a well-established principle in many scrutiny and oversight bodies, not just in respect of the environment, that it is much more efficient and effective to resolve things through discussion with the organisations that one is scrutinising, rather than jumping rapidly to enforcement. We would prefer to remain doing that if we can. If we have to, we will use our enforcement powers, but we will always strive to use informal means to resolve matters.

With regard to the criticism from the ERCS about taking too long to deal with investigations, it is important to explain exactly what we do once we receive a representation. We will do background research on a particular area and engage in correspondence and meetings with the public bodies that are affected. They may provide us with information that satisfies us and gives us all the background that we need, or we may need to go back to them on several occasions to clarify matters, points of detail, data and that sort of thing. We go through quite a long and involved pre-investigation process before we reach any conclusion.

We always remain in contact with the organisation—including the ERCS—to provide it with updates on the work that we are doing. What we cannot do, and what would be disproportionate, is provide a running commentary on every detail of every investigation that we are doing. We are an independent body, and we need to have the space in which to conduct our work.

**Douglas Lumsden:** I guess that resolving issues informally rather than going through compliance is a success story, rather than a criticism.

**Mark Roberts:** We would see that as a success story. We would also see it as being entirely compatible with the legislation that set up ESS.

**Douglas Lumsden:** One of the examples that the ERCS used was the amount of time that SEPA was given to comply with its legal duties regarding the public register. Will you provide more detail on that?

**Mark Roberts:** SEPA maintains—I think—16 public registers relating to different pieces of

legislation. Historically, they have been hard-copy registers that people had to go to a SEPA office to look at. They contain, for example, details of licence conditions that individual operators may have to meet.

Following the cyberattack on SEPA five years ago, the body is gradually rebuilding all its public registers and making them available electronically. We have agreed with SEPA a timetable by which it will do that, and it has provided us with reports on its progress.

The work is not complete, but we are continuing to engage with SEPA on its progress. That is an example of the monitoring work that the convener referenced. At the end of the process, there will be a fully online, electronically accessible register for everything that SEPA is required to do, which will be a significant improvement on the previous version.

10:45

**Douglas Lumsden:** Would you like that work to go faster? Are you taking into consideration what SEPA went through and the resources that it has?

**Mark Roberts:** We are taking into consideration the resources that SEPA has, what it has been through and the complexity of the task. SEPA will be making tens of thousands of documents available online, so it is having to work through a significant change management and technology implementation task. We are required to act proportionately in what we do, and we seek to do that in reaching informal resolutions and agreeing timetables such as this one.

**Dr Dixon:** The board has discussed the use of formal powers several times with the executive team, and we are very pleased with where we are at. When we do an investigation, our process is to identify the problem, say what end state we desire to be delivered and then talk to the public body or bodies about how we might get there, so there are conversations.

When we talk about informal resolution, it sounds a bit as though we have a cosy chat and there is a gentleman's agreement, but it is nothing like that—it can be quite tough. On the back of that process, we have a stick, which is the threat of a compliance notice or an investigation report.

We have used our power to do an investigation report a couple of times with the Scottish Government, and we routinely issue information notices, which is another of our formal powers. When we write to ask a public body for information, that falls under one of the statutory provisions in the 2021 act, so we have that formal power.

Because informal processes have the connotation of being cosy chats, we are having a think about whether informal resolution is a misleading term and whether we should call it something else. The process is not particularly informal—it is only that we are not using our formal, legal powers.

**The Convener:** Perhaps you could call it a threatened solution—or maybe not.

**Dr Dixon:** Something nice.

**The Convener:** Mark, you wrote to the committee on 21 March in response to our letter regarding the climate change plan, and I just want to pick up on a couple of the points in that letter.

The second paragraph notes that the previous climate change plan was agreed to in the dying days—for lack of a better description—of the previous session of Parliament, prior to the May 2021 election, with the plan being agreed to without amendment in March 2021. You felt that that was unsatisfactory, but it looks as though we will be in the same position again. We will receive comments on the climate change plan from the Climate Change Committee in May and will go through the procedure up until Christmas. If I was a betting man, which I am not, I would probably say that we will not agree the climate change plan until March next year, which will be just before the next election. Are you happy that we will be back where we were before?

**Mark Roberts:** No, I am not. Our intention in writing to you—and thank you for the invitation to comment on the letter—was to try to get ahead of the game and say, “This is what we think a good climate change plan would be.” Instead of waiting until September to see a draft, we wanted to put in writing what we and other scrutiny bodies thought would constitute a good climate change plan, so that the Government could have that in mind during its preparation work.

It does not get away from the fact that, almost inevitably, there will be limited time for parliamentary scrutiny of a fairly significant plan that should stand for the next few years. I remain concerned that there will be very limited time during the last remaining months of the parliamentary session to consider the climate change plan.

**The Convener:** Whatever happens, the plan will probably not be agreed until March next year, so the current Parliament will be binding definitely two, and possibly three, future Parliaments to achieving what we need to by 2045. To me, that seems to be a very difficult situation to be in. I cannot work out whether it is better to do a lot of the work and then let a new Parliament agree to a plan when it is convened.

**Mark Roberts:** As that is a political choice, I do not have a view on it. The rationale behind writing to the committee was very much to set out our view of what a good-quality climate change plan would be, based on previous experience and some of our previous work.

**The Convener:** You dodged that nicely, but it is a real problem that we are going to be doing this right up until the last moment of this session of Parliament.

In paragraph 4 of your letter, you talk about

“SMART (specific, measurable, achievable, relevant and timebound) ... targets”,

“costed”

policies and

“robust scrutiny of the plan”.

Will we get all that when the plan is put forward in September, or is that wishful thinking?

**Mark Roberts:** I remain an optimist, just about, so I hope that all the lessons that should have been learned from previous plans will be taken into account to ensure that the plan meets those requirements.

**The Convener:** My fear is how it will be costed. There might be some very high-level objectives and aims, but we will have no idea of the true cost of the heat in buildings strategy or whatever the Parliament decides to do. The problem with the last plan was that there was no costed idea of where it was going, was it not?

**Mark Roberts:** The Scottish Fiscal Commission has made it very clear in its statements the importance of understanding the costs of implementing the plan, and we absolutely endorse that view.

**The Convener:** The Auditor General has also been quite clear in his view that the issue of costs is vital.

I will move to Mark Ruskell, and then I might come back with a further question.

**Mark Ruskell:** I have just a follow-up question. I am aware that you have a memorandum of understanding with the United Kingdom Climate Change Committee, and that one of its principles is a “no surprises” approach. Was it a surprise that the CCC delayed its advice to the Scottish Government over the carbon budget? Were you aware of that?

**Mark Roberts:** We were aware of it, so I do not think that it came as a surprise to us. The Climate Change Committee is obviously an independent organisation that operates to its own timescales and under its own governance. We were aware of that, but that is exactly what I would expect to happen.

**Mark Ruskell:** From your perspective, is the memorandum of understanding working well between the two organisations?

**Mark Roberts:** From my perspective, yes. My team speaks regularly to the relevant people and analysts in the Climate Change Committee. In fact, Dr Dixon and I will be meeting its new chief executive in May, shortly after the publication of the advice to the Scottish Government. The arrangement works very well from my perspective.

**The Convener:** I want to come back with a couple of other questions, if I may. On the climate change plan, you say in paragraph 6 of your letter that it is really important that all the departments speak to each other and that there is a clear plan across the

“Government, public bodies and local authorities”.

That is a huge amount to ask for before September, is it not? Will the plan cascade all of that down?

**Mark Roberts:** It is a huge amount to ask for, but it is really important. One of the things that previous plans have been perhaps less than clear about is where responsibility lies and how that will work where multiple bodies are involved. Obviously, some of that will be wholly in the public sector space, but it is also about what will be needed from private sector partners on delivery. It is critical to spell all of that out very clearly.

**The Convener:** In paragraph 8 of your letter, you talk about “the cost of ... interventions”. Everyone will have to cost every single thing that they do, and the Government will have to cost all its policies for delivering net zero by 2045. Do you think that that is realistic in this first plan?

**Mark Roberts:** I think that it is really important to make estimates and to try to understand the costs, so that there can be a frank discussion and open scrutiny of how significant a change will be required across multiple sectors to meet net zero by 2045. It will be very challenging, and I do not underestimate the difficulty that the Government faces.

**The Convener:** Richard, are you going to tell me that you are more optimistic than Mark Roberts?

**Dr Dixon:** I am somewhat optimistic. We should remember that the new climate change plan will have almost all the policies from the current climate change plan—and more, I hope—and, indeed, will accelerate some of those policies, if it is to do the job.

Discussions have already taken place between different bits of Government and between Government and other public bodies, so some of that work has already been done. Those

conversations need to be resumed so that we can say that, for example, we need to do this quicker or faster or find a cheaper way of doing it and so on. As you have suggested, the cost estimates for measures that will happen in 2040 will be top level, because we cannot really say what things will cost in 2040.

Another important dimension, which started to come in with the last climate change plan update, is the need to understand how much it will cost not to do these things. How much is climate change already costing us? If we do not reduce emissions or go for adaptation in a serious way, what will that cost the economy and individuals? The Scottish Government says that that bill is already in the billions; there are billions to be saved by spending money to reduce emissions, so that other half of the financial equation needs to be part of the discussion, too.

**The Convener:** In his letter, Mark Roberts talks about the Government's commitment to continued annual reporting. Will you review that annually to ensure that it is measuring up to its targets?

**Mark Roberts:** I do not think that we would necessarily review it annually—that might be more the Climate Change Committee's work. We will keep a weather eye on what is happening with the climate change plan, but I reserve my judgment on whether we would do any formal work on it.

**The Convener:** It sounds as if there is a massive amount of work to do, and it is all in the last months of this session of Parliament. I must say that I have grave concerns about the whole process and the fact that it is running when we are running out of time.

Douglas, did you have a question?

**Douglas Lumsden:** I have a question about local authorities. The last time that we had the ESS in, you were supportive of the Scottish Government's plans to mandate local authorities to report on scope 3 emissions, but you were concerned about the timescales. Has anything changed since the last time you were here to give you some assurance that that can be done?

**Mark Roberts:** There has been significant progress. The Scottish Government is currently consulting on the revised statutory guidance on climate change duties, and that consultation will run until later in the year. It is a very weighty set of guidance, and we see that as a very important next step.

We were concerned that there was no timescale for when local authorities would be required to report on scope 3 emissions. Coming back to the convener's previous question, though, I feel optimistic that things are moving in the right direction. We continue to follow up, and the

Government provides us with a quarterly update on progress against the various recommendations in its improvement plan.

**The Convener:** I think that Bob Doris has some questions.

**Bob Doris (Glasgow Maryhill and Springburn) (SNP):** As we know, the Rural Affairs and Islands Committee is leading on the Natural Environment (Scotland) Bill, but this committee will have an active interest in that piece of legislation, too. In that respect, what are your initial views on the function being given to you by the bill, and your capacity, to be the independent review body, and will that impact on any of your other functions?

I have to say that I was distracted by the financial memorandum in that regard. I note, for the record, that it estimates that

"to monitor, assess, review and report on the progress made towards meeting ... targets and the Scottish ministers' review of those targets will require 5.5 to 10 full-time staff members, costing between"

£467,000 and £819,000. What level of funding do you need to ensure that this does not impact on ESS's other functions? That question is for Dr Dixon or Mark Roberts.

**Mark Roberts:** The estimates that you mentioned in the bill's financial memorandum are a minimum and maximum estimate of what we think we would need, and they take into account the full costs of the additional staff that we think would be necessary, not only to perform the statutory functions as detailed in the bill, but to provide what we think is necessary for a more year-on-year scrutiny of the Scottish Government's progress against the Scottish biodiversity strategy delivery plan and wider work on preventing nature loss and protecting biodiversity.

Those costs include necessary support for our corporate services. This is a significant additional task for us, as a small organisation, to take on, and it will involve significant additional costs. Therefore, we are trying to be as precise and as fulsome as we can be in our cost estimates of what will be required to ensure that it does not detract from our existing work.

In our thinking with regard to taking on the new duty in the bill and the functions that Mr Lumsden has just referred to, we, together with the board, have set a series of criteria that we want those new functions to meet. They have to be compatible with our existing duties of scrutinising the implementation of environmental law; they have to protect our independence and our duty to report to the Parliament, not to ministers; and we need to be adequately resourced to carry them out

effectively to ensure that taking them on will not be to the detriment of our other work.

11:00

**Bob Doris:** You might say that, Mr. Roberts, but the figures that I saw ranged from around £467,000 up to £819,000. In other words, we are talking about headroom of almost 80-plus per cent above what you think the minimum required to carry out those functions would be. It is a massive range, and if a minister came forward with it, they would be put under quite severe scrutiny. Why is there such a dramatic range in costs? Moreover, do those figures also include the £100,000 of additional money that you contend will be needed for consultancy fees, or are we talking about another £100,000?

**Mark Roberts:** The costs are what we estimate to be the minimum and the maximum to do the task set out in the bill. The lower number is the absolute bottom line in terms of the number of staff members that we would need, and the upper figure is what we would need to have everything that we wished for and to be able to do a very broad range of work on what is a very important subject. The £100,000 is included within that.

**Bob Doris:** For clarity, are you saying that to get everything that you want to meet these responsibilities in—and I hate to sound glib about it—an all-singing, all-dancing way, the cost would not be £819,000 plus the £100,000 in consultancy fees?

**Mark Roberts:** Yes, that is correct.

**Bob Doris:** The note that I have here says that the £819,000 would be for 10 members of in-house staff. They, by definition, would not be consultants.

**Mark Roberts:** That is correct.

**Bob Doris:** So, unless my briefing paper is wrong—and I am looking at the convener when I say this—it appears that the cost would be £819,000 plus another £100,000.

**Mark Roberts:** That is right.

**Bob Doris:** I am sorry—I thought that you said the opposite. So, we would be nudging £1 million.

**Mark Roberts:** Yes, we would. It is additional.

**Bob Doris:** We are not the Finance and Public Administration Committee, but I am minded to note that the cost could be between half a million pounds and £1 million.

**Mark Roberts:** That is correct. I am very much aware that that is a broad spread. In producing that material, we looked at a range of options for resourcing those duties, and the Scottish

Government asked us to provide a minimum and a maximum estimate.

**Bob Doris:** Would it be reasonable, Mr Roberts, to have a core range of provisions that are costed, with the ability to flex up and get additional expenditure in years 2 or 3, instead of seeking the best part of a million pounds in year 1?

**Mark Roberts:** To be clear, we envisage the costs ramping up over time. The bill sets out the framework for the statutory targets, with the actual targets and the details themselves coming later in secondary legislation, but we think that we will need to build up some of our capacity and expertise over the next couple of years to be ready for that. This will be a significant additional piece of work for us. As you have said, we have offered a range of models that we think are viable. We are about to have a further discussion with the Scottish Government about exactly how that might work in practice.

**Bob Doris:** You could be completely right about all of that, Mr Roberts—I am merely questioning the numbers. That is my job here today.

My final question on this issue is this: if we were to approach the £800,000 figure, would it be possible to get in-house expertise so that you did not have to rely on consultants?

**Mark Roberts:** I certainly hope that we would be able to get some in-house expertise. The advantage of having some money available to bring in external consultants—which we already do—is that we would be able to commission specific pieces of work from third parties, instead of relying on having in-house expertise for everything. Part of the model for how we are resourced is about maintaining a degree of flexibility. We have permanent members of staff; we have staff on fixed-term contracts; and we also retain capacity to commission external advice. I see that model continuing and certainly being applied to the duties under the Natural Environment (Scotland) Bill.

**Bob Doris:** That was helpful. Thank you.

**The Convener:** I do not think that that is the final question on this theme. Kevin Stewart wants to come in, too.

**Kevin Stewart:** First, as a general comment, if somebody estimated a cost as X up to double X, I would find that a bit questionable. I do not want you to go into detail today, but it would be interesting to see your workings for all of this.

Mr Doris has already asked about the £100,000 for external consultants, and Mr Roberts, you said that you have used external consultants when the expertise has not been there. How much have you spent on external consultants in, say, the past year?

**Mark Roberts:** I am afraid, Mr Stewart, that I cannot give you that number off the top of my head. I will put that in writing for the committee.

**Kevin Stewart:** We would be grateful for that.

How many times has the same individual consultant or same organisation of external accountants been used on more than one occasion?

**Mark Roberts:** The only circumstance that I can think of where we have used the same source of external advice is in relation to external legal advice; we have a contract with a legal practice to provide us with legal advice on a standing basis. All other external advice that we have got has come from different organisations.

**Kevin Stewart:** Again, it would be very useful for the committee to see where you are getting the external advice from and how you are going about contracting external advisers. I agree with Mr Doris that, in some regards, it would be better if those things could be done in-house. I recognise that there are certain levels of expertise that are difficult to capture, but legal advice is not normally one of them, I would say.

**The Convener:** We come back to Mark Ruskell, who has some questions.

**Mark Ruskell:** One area of biodiversity that you have focused on is the designation and protection of internationally important wetlands—the Ramsar sites—and the two-tier level of protection that exists in that respect. I am aware that the Scottish Government is consulting on that, and I think that you have supported those recommendations, but is there a timescale for implementing them? Will you request the Government to introduce a timescale for implementation, and does that link into the Natural Environment (Scotland) Bill?

**Mark Roberts:** The two-tier system with regard to Ramsar sites, special protection areas and special areas of conservation has been a long-standing issue, and the consultation that is live at the moment should address it. We are awaiting the summary of responses to the consultation, and we will engage with the Scottish Government on exactly when it will implement the conclusions of that, so the answer to your question is no, we have not yet set a timescale for that. Are we watching carefully and monitoring what is happening? Yes, we are.

**Mark Ruskell:** Would that require legal change through the Natural Environment (Scotland) Bill?

**Mark Roberts:** I think that the intention is for all of that to be done through policy changes.

**Mark Ruskell:** Right. Thank you.

**The Convener:** Monica has some questions.

**Monica Lennon:** I turn to the issue of sewage pollution, which ESS has done a lot of work on. There have been many concerns across the UK about the antiquated condition of sewage infrastructure and about monitoring and data. There are also concerns about complacency in Scotland, in that our situation is not as bad as what is happening over the border. I know that that issue has been looked at closely.

The committee previously took evidence from Scottish Water, which, it is fair to say, disputed allegations that it was acting illegally in relation to discharging combined sewer overflows during dry weather. Are you able to give any update on ESS's analytical work into the matter and on whether there is any evidence of illegal sewage discharges in Scotland?

**Mark Roberts:** Our analytical work in this area, which we published in September, looked at the legislation and at the data that was available on spills from storm overflows. That work picked up on the fact that a relatively small proportion of the total number of storm overflows was monitored. During 2024, Scottish Water had been actively trying to increase the number of monitors that it had in place in storm overflows as part of its improving urban waters route map. That work has been completed, and Scottish Water has subsequently committed to extending the network of monitored storm overflows during 2025. Off the top of my head, I think that that will take it to roughly half of all combined sewer overflows being monitored.

A very positive step with regard to the public's interest in that topic—which, as you point out, is significant—is that you can now go to the Scottish Water website and see live data on spills from storm overflows. The data also indicates whether a storm overflow is a priority for future investment, which is a positive step, too.

Our work picks up on the fact that the guidance that existed around the operation of storm overflows was somewhat elderly, dating back to the end of the 20th century. In response to our report, the Scottish Government has said that, at a high level, it is looking at the regulations on urban waste water treatment in the round, in the context of the recasting of the European Union urban waste water treatment directive, which became law last year. The Scottish Government is looking at its entire approach to the regulation of waste water treatment in the light of all the pressures that climate change and increasing run-off from urban areas are putting on the waste water treatment network, and in the light of our recognition that, as you have said, the infrastructure is ageing. That is the right thing for it to do.

**Monica Lennon:** The public are still very concerned. Scottish Water has obviously made

some progress, but are you satisfied that the actions that were set out in responses from Scottish Water, the Scottish Government and SEPA to the ESS investigation report on storm overflow will address your recommendations? I hear what you say about the Scottish Water overflow map, but do we now have a complete picture or is it still incomplete?

**Mark Roberts:** I would not say that we have a complete picture. The fact that the Government has decided to look at the urban waste water treatment regulations in the round is positive. In late 2023 and early 2024, it consulted on an approach to managing waste water, and that set out quite clearly some of the challenges that the water industry faces.

At the moment, Scottish Water is consulting on its long-term strategy, which is picking up on some of the challenges, too. It is very honest about the fact that everything is not perfect and that the network must be adapted and invested in to ensure that it is resilient for the future.

**Monica Lennon:** Is there anything in relation to CSO that should be in the long-term strategy that Scottish Water is consulting on?

**Mark Roberts:** We are very positive about the improved data that is available. The approach that is being taken to try to concentrate on storm overflows that spill during dry weather—which really should not be happening—is appropriate. I recognise that investing in infrastructure and making changes takes time, but we want to see a clear plan for when we will no longer see any storm overflows spilling during dry weather.

11:15

It is important to note that the system exists to ensure that, at times of extreme rainfall, there is no flooding of houses and businesses—it is a necessary safety valve. However, spills in dry weather should not be happening.

**Monica Lennon:** Is there still work to be done on having a clear plan to address that?

**Mark Roberts:** That is a continuing work in progress by Scottish Water.

**The Convener:** I go to the deputy convener for a question.

**Michael Matheson:** Sticking with the issue of storm overflow during dry weather, I would like some clarification. Do you have any evidence, as part of the analytical work that you have carried out, of storm overflows taking place during dry periods?

**Mark Roberts:** Yes.

**Michael Matheson:** You do. To what extent?

**Mark Roberts:** It is a small number of overflows in a very restricted number of locations, but it is happening, in some cases for very extended periods. We want to see a plan to address that in the terms of Scottish Water's next—

**Michael Matheson:** Yes, I understand that—you have covered that part. I am trying to understand the extent. What are we talking about here? You say that it is a “small” amount. What is a small amount?

**Mark Roberts:** Again, I do not recall the precise numbers of storm overflows as a total of the 3,000-odd that exist across Scotland. I do not want to say a number on the record and give you a misleading figure, but I think that it is in the tens.

**Michael Matheson:** The tens of thousands?

**Mark Roberts:** The tens.

**Michael Matheson:** Oh, the tens—as in double digits.

**Mark Roberts:** Yes.

**Michael Matheson:** Right. What is the frequency with which that happens?

**Mark Roberts:** It varies significantly from one storm overflow to another. The particular nature of the infrastructure around an individual storm overflow varies significantly.

Where we had real concerns was where the data was showing us that there were extended periods of spilling taking place after extended periods of dry weather. That is not the way in which the system is supposed to work. When there is a spill during a dry period, there is less of a dilution effect, so the environmental impact is potentially greater.

**Michael Matheson:** I am trying to understand the extent and the scale of the challenge. Of the tens of cases in which spillage occurred, on how many occasions did that constitute a significant level over an extended period of time?

**Mark Roberts:** Again, I would want to go back to the data to give you an accurate picture. I apologise—I do not have the details in my mind at the moment. We will write to the committee to explain exactly the results of our analysis.

**Michael Matheson:** That would be helpful, so that we understand it.

So, when Scottish Water disputes the allegation that it is illegally discharging CSOs during dry weather, that is wrong.

**Mark Roberts:** Our work looked at the data that existed where there was information available from Scottish Water. We did not look at the individual compliance conditions that might have pertained to those spills, so we did not comment



on that—we looked at it purely from the perspective of, “This is the data, and this is where it’s telling us that things are happening that shouldn’t be happening.” We did not look at whether or not those were in breach of any legal requirements.

**Michael Matheson:** Okay. Who provided that data?

**Mark Roberts:** Scottish Water.

**Michael Matheson:** Forgive me—I am a wee bit confused here, which is easily done sometimes. I am just trying to understand. Scottish Water says that it disputes that it has illegally discharged CSOs during dry weather. It has provided you with data, and from that data you have assessed that there are circumstances, numbering in the tens, in which CSOs have been discharged during dry weather, but we do not know whether or not that is illegal.

**Mark Roberts:** That is correct. We did not set out, in what was an analytical project, to look at the data to examine individual cases of compliance or otherwise—that was not the purpose of the work.

**Michael Matheson:** Okay. So, who would determine whether it was illegal or not?

**Mark Roberts:** It would be SEPA, I think, that would look at that, as the regulator of Scottish Water.

**Michael Matheson:** That is helpful—thank you.

**The Convener:** It might be helpful to you, Michael, but I am still totally confused as to who is doing what. SEPA and Scottish Water—which will, no doubt, be reviewing this evidence session—might want to pass comment on the information that we have just heard, because I am sorry to say that I remain confused.

I will come to Mark Ruskell for a question, but before you leave the topic of water and go on to something else, I would like a follow-up. You go ahead with your question first.

**Mark Ruskell:** Sure—that is fine.

I want to reflect on the evidence that we had from SEPA when it came to the committee last month. We discussed the central overarching target of ensuring that about four fifths of our water bodies in Scotland, which include rivers and coastal lochs, are in good or better condition by 2027. SEPA identified that the biggest issue there is more to do with diffuse pollution, which comes from agriculture and other sources more generally, rather than from CSOs specifically.

I ask you for your reflection on that. It feels like it is a big issue if we miss that target. What more can ESS do? Do you share SEPA’s concerns?

Where should the pressure on Government, or on other bodies, be?

**Mark Roberts:** We share SEPA’s concerns. Diffuse pollution is probably the largest pressure on water bodies across Scotland. Waste water remains a significant issue in a small number of catchments, and it is really important—as we have just discussed—that those are addressed. River basin management planning through the lens of diffuse pollution is one of the analytical pieces of work that we are doing this year. I absolutely agree that diffuse pollution remains the primary pressure on water quality.

**Mark Ruskell:** What kind of output will we see from ESS on that? Arguably, this area is harder to tackle. It should be relatively easy where Scottish Water has consent for discharge of CSOs—that is permitted and there is a set of rules, and if you break those rules, you are out of compliance. Diffuse pollution is harder—it is about farmers and landowners, and regulation, good practice or whatever. It feels like a trickier issue to deal with.

**Mark Roberts:** I think that it is a trickier issue to deal with. It has been around for a very long time and has been a hard nut to crack. As I said, SEPA is absolutely correct in saying that it is probably the biggest pressure on water quality, and we need to look at run-off from agriculture and from urban areas in the round if it is to be improved to meet the 2027 target.

**Mark Ruskell:** Convener, you wanted to come back in on that topic.

**The Convener:** Yes—I have a couple of questions on river basin management plans. It is about not just pollution but a change in the water quality. For example, I know that, on the Spey, increased temperature is a threat because cooling water is going into the river, which has an effect on flora and fauna. In addition, there is the abstraction of water—we know that 40 per cent of the water above Aviemore that should go into the Spey is being hived off to the Tay or down to Fort William to generate power.

When you look at the river basin management plans, you will no doubt be looking at Q95 flows, which I am not sure that anyone truthfully understands, and any response to them does not plan for them being potentially breached. Are you going to do any work on all the pressures on the river? It is not just what is flowing into it but the effects of industry and abstraction, as well.

**Mark Roberts:** In that piece of work, we will not be looking at abstraction. We have chosen to concentrate, as I said, on diffuse pollution. We are interested in wider questions around abstraction and irrigation and the impact on climate change and water availability and scarcity in the round, but we will not be pursuing a piece of work on that in

the immediate future. It has been on our longlist, but we have decided to prioritise other things this year.

**The Convener:** As an observation, it seems that, if we agree to abstract water out of one catchment to put it into another, we cannot continue to do so if pressures on the catchment from where the water is disappearing continually increase. That seems to be the wrong thing to do—it might be robbing Peter to pay Paul.

**Mark Roberts:** As I say, we want to look at river basin management planning in the round and take an overview of that system during our current piece of work. I will bear what you said in mind in how we frame that.

**The Convener:** Sorry, I will push a little more on water temperatures. There is the whole issue around decreased summer flows, which we appear to be getting, except for extraordinary events where there are spates in rivers. If there is less water, the water temperature will be warmer because the water level will be shallower across a river. That will have an effect on the flora and fauna; it might encourage algal and weed growth or be a detriment to freshwater mussels, salmon or any other species. Will you look at that, or are you happy for us to allow water temperatures on the Spey, say, to go up by 4 degrees because of industrial activity?

**Mark Roberts:** I would not say that it is something that I am happy about. Where I would come from in this discussion is where we can add value and our remit in looking at relevant pieces of environmental law. The issue is absolutely on our mind. We look at climate change adaptation and the impacts of climate change throughout our work, and we will bear water temperature in mind, but we are not explicitly concentrating on it as part of our current piece of work.

**The Convener:** I hope that you have heard my comments, Mark.

**Mark Roberts:** I have.

**The Convener:** I will hand back to Mark Ruskell.

**Mark Ruskell:** I will move from water to air. You will be aware that the committee is currently looking at a petition that recommends the adoption of the World Health Organization's recommendations in relation to nitrous oxide and particulate matter. You have already been in touch with the Scottish Government to recommend that it adopts those guidelines on particulate matter. Have you had a response from the Government on that?

**Mark Roberts:** We have had a response from the Government, which has said that it will consider those guidelines in the context of its

review and revision of its current cleaner air for Scotland 2 strategy. Our understanding is that the Government intends to start working on its next air quality strategy during the current year. That is another piece of work where we continue to monitor exactly what progress is being made. We would very much like to see a tightening of the air quality standards in order to meet or to move towards what is recommended by the World Health Organization.

**Mark Ruskell:** The development of the cleaner air for Scotland 3 strategy will obviously take time to come through and to be implemented. Some of the actions in CAFS3 might take a number of years to filter through. Do you see an issue there with potential divergence from the EU? Is the EU moving more quickly on adopting more rigorous, health-based limit values?

**Mark Roberts:** The European Union tightened its air quality standards in its revision of the ambient air quality directive, which came into force last year. We would like to see the Scottish Government taking that into account in its thinking about what is best for Scotland. Its policy of maintaining alignment with the European Union, with the caveat of that being where that is appropriate and effective for Scotland, remains in place. We will continue to stay in touch with the Scottish Government to see what it comes up with in terms of next steps in improving air quality.

To reference the committee's previous evidence session with the cabinet secretary, in our report on particulate matter, we advocated that the air quality strategy should encompass a wider range of areas that have perhaps not been a focus of past policy and action. For example, in the future, the Scottish Government may want to do more on ammonia as a potential precursor source of particulate matter from agriculture.

**Mark Ruskell:** What is the timescale for member states to implement the ambient air quality directive? Could we be in a situation where member states are adopting more stringent air quality regulations than Scotland, which has an intention to do something in the space but is a wee bit behind, or are we making progress on that at the same pace?

**Mark Roberts:** I am afraid that I cannot recall the timescale for implementation of that. Again, I would have to write to the committee to clarify that.

**Mark Ruskell:** Dr Dixon, do you want to come in?

11:30

**Dr Dixon:** I think that the timescale is 2030. If a CAFS3 is created next year and finished in 2027, there will be a short interval in which to catch up.

The standards that the European Union has adopted are not quite the full WHO standards. They are a compromise between where they were and those standards. If we were to go for the same thing, we would have that period of 2027 to 2030 to reach the same standards.

The frustration is that if a certain level of air pollution is bad for you today but it is not illegal, why should you wait until 2030 before it becomes a problem? It is clearly a problem for you today. There is always a compromise between where we should really be and how quickly society can change to get there. That is why 2030 is, I believe, the European deadline.

**Mark Ruskell:** Mark Roberts was talking about the previous evidence session that we had on authorisations and ammonia emissions. Do you see a similar potential for mismatch or alignment with the EU industrial emissions directive when it comes to ammonia? Is Europe moving at pace to start to regulate medium-scale intensive livestock production? Are we falling behind that, or are we broadly in line with it?

**Mark Roberts:** I would certainly agree that Europe is moving at pace in that area. I am not clear about what the Scottish Government's next steps will be in that area, and I am waiting for the air quality strategy revision process so that I can see what those steps will be.

**Mark Ruskell:** Would you say that ESS is holding back a bit—

**Mark Roberts:** I would not characterise it like that.

**Mark Ruskell:** —until you get involved in the CAFS3 process and see what Government thinking is on those things?

**Mark Roberts:** We are waiting to see the development of that process, and we will scrutinise that as it goes through its various stages.

**Mark Ruskell:** You do not have a view in advance of CAFS3 being consulted on.

**Mark Roberts:** That is correct.

**Mark Ruskell:** You are waiting for the process.

**Mark Roberts:** We are. The Government has been very clear that that will be the vehicle that it will use to take forward the next stage in its approach to air quality. That is a reasonable approach, and it is therefore appropriate that we, as you suggest, hold back until that is slightly more developed. However, we are very much in touch with the air quality team in the Scottish Government.

**The Convener:** I am looking around the committee to see whether there are any other

questions. Mark Roberts, you may be in for a shorter evidence session, because Dr Dixon was in here not long ago and answered many questions. He may have saved you.

**Monica Lennon:** I still have questions, convener. I want to ask about environmental governance, if that is okay.

One of ESS's analytical priorities is environmental governance. Earlier in your opening statement, Dr Dixon, you referred to the Scottish Government's governance review. You used the word "lacklustre", so I am keen to hear more about your thinking on that.

I am also keen to know what work ESS is doing, or is planning to do, around Aarhus compliance. My understanding is that, because we do not have access to an environmental court or tribunal, because we have unequal rights of appeal in relation to our planning system and because the costs around access to justice in environmental matters are very prohibitive, people feel that they do not have routes to environmental justice. You said that what the Government is doing there is lacklustre, but what more is ESS doing to try to get some progress and compliance?

**Dr Dixon:** I will start off on the Government's review. We have previously said that it was a missed opportunity. It drew a very narrow boundary and did not look at the whole system of environmental governance and the bodies that are involved in delivering it in Scotland.

The review focused on and said some nice things about ESS, which, of course, we are grateful for, but to me, there are three areas of unfinished business. The review did not talk about some of the things that Europe used to require us to do, which we as ESS do not do and which nobody does any more, and principal among those is reporting environmental data.

We had to report a lot of data through the UK to the European Commission or the European Environment Agency, and that does not happen any more. If we get a scrutiny duty through the Natural Environment (Scotland) Bill, we will have reinstated a little bit of that, but there will still be considerable gaps. The European Commission would take and interpret data from all the member states, so that states could understand how well they were doing in comparison to others and whether others had clever ideas that they might want to copy to help deliver improvements in environmental quality. That gap still exists and has not been thought about enough.

The second thing is the Aarhus convention. As you say, Scotland continues to be in breach of the Aarhus convention and the Scottish Government acknowledged that in its consultation. However, it proposed a number of measures that might

address the excessive cost of taking action and the fact that, when you do take action, it is probably an expensive judicial review that looks at whether the correct procedure was followed rather than at whether the right outcome was arrived at and the merits of the case. Those two things are still the case. Of the three or four measures that were proposed, the biggest one was that we were soon to have a right to a healthy environment through a human rights act. Of course, that has been either postponed or completely shelved, so the big thing that was going to fix that problem is not happening any more. Again, we are left with no answer about how we are going to become compliant with the Aarhus convention.

One way of addressing a lot of those issues would be to have an environmental court, but the Government was desperate not to do that. The original consultation on the governance review hardly mentioned an environmental court and dismissed the idea without any evidence. Lots of people complained, so later on in the consultation the Government produced a really shoddy secondary paper that went into environmental courts and why it does not want one, but it was still not very convincing. In the final write-up of the consultation, it handed us a poisoned chalice, which is very carefully phrased. It says that we should

“give further consideration to the conditions where it would be appropriate to investigate the individual circumstances of a local area, group or community, given the restrictions on exercise of its powers and functions.”

It also asks the committee to ask us what we have done about that.

I say that that is a poisoned chalice because, although technically those words are neutral, they give the impression that ESS is going to fix the problem that there is no environmental court. It has passed the challenge and the expectation on to us, and when we say that we can do certain things, but we cannot actually do most of the things that we are looking for, we will get the blame. The committee will then have to ask us why we cannot do those things. That is the third piece of unfinished business out of that consultation. It is hard to see a way forward.

As the Government has requested, we might say something quite robust in our strategy about what we can do and what we cannot do. That will clearly define the gap that people think should be filled and we will say that we cannot fill it with our current powers, and that we might not be the right body to do that. That is why I called the consultation lacklustre and why I think that it is a missed opportunity.

**Monica Lennon:** That sounds shambolic. Many constituents and communities across Scotland are worried that they do not have any effective means

of challenging decisions about the environment that are made by public authorities. We know that judicial review is very expensive and that it looks at process rather than the merit of a decision. It sounds as though you are saying that there is no real leadership.

We on the committee are all well aware that Scotland has a serious nature and climate emergency to tackle. Hearing words such as “lacklustre” and “shoddy” and the Government passing the independent watchdog of the ESS a “poisoned chalice” is quite alarming. Where does Scotland go from here?

To pick up on the point about the lack of data reporting, I am keen to get some clarity about the timeline. It sounds as though, if we eventually report that data, there will be quite a big gap in time. It worries me that we are creating opportunities for polluters to continue to wreck and damage Scotland’s environment with little consequence.

What more can ESS do on environmental governance? Who needs to be held to account on the gap in and reporting of environmental data?

**Dr Dixon:** On your second question, often data is still being collected but is just not being reported anywhere. There will be some cases in which it is not collected any more, so we have lost some years of data on particular topics. In general, the data is probably collected, and it might appear on Scotland’s environment web, so it is available. However, there is a missing step: there is no interpretation of that data. No one is saying, “Oh, this is getting worse. What’s happening here? Something should be done,” so it is that—

**Monica Lennon:** I hope that you do not mind me interrupting you, Richard. You do not appear very confident on the issue. Data that is collected but not analysed or reported does not serve any purpose. Can you be more precise about the topics that you are referring to? When you say that the environmental data is either being collected and not reported or it is not being collected, can you give some examples to the committee of what you mean?

**Dr Dixon:** An example would be the air quality information that we collect. We used to collect the data and report it to the European Commission and the European Environment Agency. Every year, they would produce a report about air quality across the European Union. Our data, though inadequate, was compared with that from other countries. We could look at that and, for example, say, “We’re doing better than Poland, but actually Spain has done something really clever—let’s look at that.” That kind of interpretation was possible, and there was some pressure on us from the

European Union to do better if we were not doing better.

As I said, we still collect that data. It is still available, but no one—apart from Friends of the Earth sometimes—is saying annually what the picture is. There is no official publication setting out the state of the air in Scotland for that year, and, for example, why some of it has got worse, why quite a bit of it has got better and what things are being done about it. We have lost that data analysis part. That is the kind of gap that I am suggesting.

On your other question, about whether there is a lack of leadership, there is quite a strong determination not to have an environmental court. In a sense, that is quite strong leadership, but it is just not in the right direction, as far as I am concerned.

What can we do about it? We had a representation about compliance with the Aarhus convention. We looked at that, then put it on hold, because the Government was doing a governance review. Now that that review has finished, we are reactivating that investigation, so we will again have some more to say about our compliance or lack of it and what should happen.

We have regular conversations about court fees with the Scottish Government and the ERCS about where we are at and what should happen. We keep an eye on the Aarhus convention compliance committee, which meets every year and says that the UK and Scotland are out of compliance.

I want to correct a misconception that you might have been left with when the cabinet secretary was here. The Aarhus convention does apply in Scotland and the compliance committee has looked at the situation specifically in Scotland, not just in the UK. It is not that the UK is out of compliance and therefore Scotland might be. According to the compliance committee, Scotland is out of compliance.

**Monica Lennon:** Do you think that the Scottish Government is failing to understand that?

**Dr Dixon:** I think that it probably understands that extremely well. The consultation probably stated that quite honestly, because the Government thought that it had some solutions. However, now that those have fallen apart, it is in a bit more of a quandary about what to do.

ESS will continue to look at that. It will presumably end up as a full investigation, and we will see where we get to in trying to provoke some change.

**Monica Lennon:** To recap, we are in breach of the Aarhus convention because people do not have proper rights to challenge environmental

decisions by public bodies, the Scottish Government does not appear committed to enacting a right to a healthy environment and we do not seem to have a proper system of collecting and reporting environmental data. Do the Scottish Government and the other public bodies that have a role take the climate and nature emergency seriously enough?

11:45

**Dr Dixon:** To correct the first part of that, the compliance committee has said that we are definitely out of compliance on cost. It is too expensive for a normal person to go to court to challenge a decision, because they could be risking their home in doing so.

On the second point, about lack of access to legal review, which is about the merits rather than the procedure, a case alleging that there is a lack of access is in front of the compliance committee. The case, which has been open for a long time, is said to be moving again. We expect the compliance committee to say, “Yes, that’s the case. That’s a problem.” Common sense tells you that that is a problem, but, as far as I am aware, it has not officially ruled on that yet.

Are we failing on the nature and climate emergency as well? Clearly, we have a Natural Environment (Scotland) Bill, some targets are coming in and we are getting a scrutiny role. That seems to be taking the nature emergency seriously and moving in the right direction.

Are we taking the climate emergency seriously? Clearly not, because we have had to abandon our 2030 and 2040 targets, and less than 50 per cent of the measures in the current climate plan are on track to deliver. Clearly, we have not been taking that seriously. As a country, we have done something about that by producing the new bill, and we will be doing something by producing the new climate change plan, albeit on a rather tricky timescale with regard to scrutiny. The picture is mixed. We have failed in the past and we are trying to improve.

On Aarhus compliance, it is obvious that the Government, whose previous answers have fallen through, does not have an answer at the minute. Our investigation will no doubt highlight that and might well suggest the way forward. Of course, part of the process of investigation is that we will talk to the Scottish Government and we might agree some action with it and potentially with other bodies. It might be that we will get to a solution that we have helped to create and that reaches the end point that we all want, which is that people have access to justice on environmental matters. That is the outcome that we will continue to push for.

**Monica Lennon:** Thank you. I think that we all want to see an improvement on “lacklustre” and “shoddy”.

**The Convener:** As there are no further questions that the committee would like to raise, I thank Richard Dixon and Mark Roberts for coming to the meeting and giving evidence today. There are a few things that we will need to follow up with you, and the clerks will prompt you about the issues on which we are looking for answers.

11:47

*Meeting continued in private until 12:13.*

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