



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 24 September 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 24 September 2019

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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
25th Meeting 2019, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

*Angus MacDonald (Falkirk East) (SNP)

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

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Hugh Dignon (Scottish Government)

Mairi Gougeon (Minister for Rural Affairs and the Natural Environment)

Elspeth Macdonald (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 24 September 2019

[The Convener opened the meeting at 09:30]

Subordinate Legislation

Conservation (Natural Habitats, &c) (Miscellaneous Amendments) (Scotland) Regulations 2019 [Draft]

The Convener (Gillian Martin): Welcome to the 25th meeting in 2019 of the Environment, Climate Change and Land Reform Committee. Before we move to our first item of business, I remind everyone to switch off their mobile phones, or put them on silent, as they may affect the broadcasting system.

Agenda item 1 is to take evidence on the draft Conservation (Natural Habitats, &c) (Miscellaneous Amendments) (Scotland) Regulations 2019. I am delighted to welcome Mairi Gougeon, who is the Minister for Rural Affairs and the Natural Environment. She is joined by Hugh Dignon, who is the head of the Scottish wildlife and biodiversity unit at the Scottish Government.

I understand that the minister wants to take us through the statutory instrument that is before us.

The Minister for Rural Affairs and the Natural Environment (Mairi Gougeon): Yes. Are you happy for me to make a short statement?

The Convener: You can make a statement, and then we will ask you questions.

Mairi Gougeon: That is fine. The Government is fully committed to protecting Scotland's natural environment. There are many non-native species in Scotland, most of which are of little or no concern. For example, many agricultural crops and common garden plants are not native to Scotland and they contribute positively to our economy and our wellbeing. Species are classified as invasive when they cause harm, whether that is environmental or economic, or harm to our health.

Invasive non-native species were identified as the second biggest threat to biodiversity in the global assessment by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services. They are a particular threat on islands, which can have sensitive and distinct ecosystems that are vulnerable to such changes. Invasives can have a wide range of negative impacts on native species, including the

transmission of disease, predation and competition for territory and food resources. They can also lead to increased flood risk, infrastructure damage and human health risks. They are estimated to cost Scotland about £250 million a year. None of us can be in any doubt that we need to do all that we can to address the issue.

This instrument will ensure that we are aligned with the European Union and working to prevent invasive species from becoming established in Scotland and across the EU. On 1 April 2019, through two negative statutory instruments, we partially implemented the EU regulation on the prevention and management of the introduction and spread of invasive alien species. The instrument that is before the committee completes the implementation of that EU regulation. Specifically, the instrument will ensure that penalties are in place for infringement of the prohibitions on the keeping and sale of 13 species of European Union concern. It also creates penalties for infringing other restrictions on breeding, transporting and using invasive alien species in a variety of ways. It includes transitional arrangements of the statutory defence for owners of companion animals and commercial stock. Finally, it sets out arrangements for licensing certain restricted activities, for example, allowing existing owners to keep companion animals for the rest of the animal's natural life.

That lays out what we are looking to do, and I am happy to take questions.

The Convener: In effect, the instrument will fill a gap that might be left after an EU exit, in terms of the regulations that are already in place. Is that right?

Mairi Gougeon: The instrument is on the back of an EU directive from 2015. The two negative instruments that we introduced earlier this year dealt with part of that. There was other work and other priorities, and we are introducing the rest of the regulations today. This instrument will fulfil our obligation to implement the directive. Regardless of Brexit, this is something that we still need to do. *[Interruption.]*

The Convener: Does Mr Dignon want to come in?

Mairi Gougeon: No, he is just reminding me that the 2015 legislation that I have just referred to is an EU regulation rather than a EU directive.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): The instrument's policy objectives and the minister's opening remarks refer to companion animals.

I want to be clear about the fact that, as I understand it, some companion animals are invasive species—I am here to be corrected if I am

wrong in saying that. I come back to the illegal and certainly unauthorised release of beavers on Tayside. I am uncertain as to whether they were companion animals, but they were not commercial stock. Does the order change the rules on matters of that kind? I can see that Hugh Dignon is frowning, so I might not be explaining this as clearly as I ought to be. That might simply be because I do not understand exactly the effect on companion animals or animals held by private individuals. Perhaps further information on that will help me and others.

Mairi Gougeon: Raccoon dogs would be an example of this. Somebody could be keeping a raccoon dog, which is considered to be an invasive non-native species. The regulations allow for the owner of that animal to keep it for the rest of its natural life. After that, the owner would not be able to keep any more raccoon dogs.

Is your question about how people would keep that animal?

Stewart Stevenson: I am having difficulty formulating the question, to be blunt about it.

To pick up on raccoon dogs, does the regulation prevent their owners from breeding further generations of them? Does it allow the animal, as you suggest, simply to go to the end of its natural life? What is the effect of the regulations on companion animals? I am a bit uncertain about it, but somebody who owns raccoon dogs might be clear about it. I do not and I am not. I am still uncertain what my question is, far less what the answer is.

The Convener: Is the question whether, if you breed a non-native species, you contravene the regulations?

Mairi Gougeon: The regulations tie all those points together. People would no longer be able to keep raccoon dogs once their raccoon dog had reached the end of its life. There are also restrictions to prevent people from breeding that animal or selling it on. Combined with the instruments that were laid earlier in the year, these regulations bring all that together to put those further restrictions in place. I hope that that answers your question.

Finlay Carson (Galloway and West Dumfries) (Con): Does the instrument keep pace with the EU regulations that it replaces? What added burden will there be on landowners, for example, to control invasive species? Does the instrument introduce any additional burdens?

Mairi Gougeon: On the first part of your question, we have been looking to do this for a while and we have been in constant dialogue with other devolved Administrations about implementing it. Scotland will be the first part of

the UK to implement the regulations, and other countries within Great Britain are also looking to do it. This all feeds into our invasive non-native species strategies.

The regulations are also part of the overall EU 2020 biodiversity strategies and they tie things together to make sure that we are all heading in the same direction and implementing the same measures to prevent invasive non-native species within the UK and across the EU.

What was the second part of your question?

Finlay Carson: I just wanted you to clarify whether the instrument will keep us in line with other European countries or whether it goes beyond that?

Mairi Gougeon: It would keep us in line with what is happening across the rest of the EU. Did you also have a question about any extra burden?

Finlay Carson: Yes.

Mairi Gougeon: We do not believe that there would be an extra burden. Does Hugh Dignon have any further information on that?

Hugh Dignon (Scottish Government): There is no specific extra burden on landowners, whom Mr Carson mentioned. It is worth noting that the instrument places some additional requirements on people who are in the horticultural trade, such as garden centre owners, pet shop owners and people who may be selling species to be used for research or medicinal purposes. If the species are on the list of those of European concern, that places restrictions on what people can do with them.

The Convener: To what extent are the species on that list already in circulation in Scotland?

Mairi Gougeon: If you do not have a copy of the list, we will be happy to give you that information. Some of the species on the list are not relevant to us in Scotland because they would not be able to exist here. I cannot remember how many are on the list altogether, but I have it here. I will send it out to the committee with the further information.

The Convener: We do not have a copy of the list; that would be helpful.

Mark Ruskell (Mid Scotland and Fife) (Green): Just to be clear, the instrument is about restrictions on sale, breeding and management. What happens if a landowner has, say, giant hogweed on their land and is not controlling it? They are not spreading it, but not doing anything to prevent it from spreading. Does it cover that?

Hugh Dignon: That is not part of this legislation. That is covered under existing Scots law—the Wildlife and Countryside Act 1981—

under which, as you know, it is an offence to release any such species or to allow it to spread. There are provisions in the 1981 act to make species control agreements with landowners for them voluntarily to remove the invasive species, or to impose a species control order if it is necessary to compulsorily require someone to remove a species. There is no general duty on landowners to remove species from their land. That would be a pretty onerous requirement, given the extent of invasive species such as rhododendron and Himalayan balsam throughout Scotland. However, where species pose a particular threat, we can take an approach that leads through a species control agreement and moves on to a species control order to work with the landowner to get the species removed.

Mark Ruskell: Have any species control orders been issued in relation to giant hogweed, as an example, which is a public health problem in some areas?

Hugh Dignon: I would not like to say for certain. I will need to get back to you to confirm that.

Mark Ruskell: I would like to know the numbers.

Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): Can the regulations easily be changed if a non-invasive species becomes invasive in Scotland? What happens at that point? There is the list of 49 species and the list of 13 in Scotland. What happens with the regulations if another species becomes a problem in Scotland?

Mairi Gougeon: I will ask Hugh Dignon to answer that.

Hugh Dignon: Under the instruments that were introduced earlier in the year, we added species of EU concern to the lists of species on which there are direct restrictions on keeping, selling and so on. However, the 13 species in this instrument are not capable of being invasive in Scotland and, therefore, we could not control them under the 1981 act; we had to do it under this secondary legislation. If those species became invasive, we could address them under the 1981 act. I guess that we could change the underlying legislation from the EU regulations to the 1981 act. That would have limited impacts in real-world terms, but it would change the basis on which the legislation was banning or controlling the keeping, selling, transporting and so on of the species.

Rachael Hamilton: Do you foresee any problems in the short or medium term? It is probably not going to happen, but you could make the consideration that you have just described.

Hugh Dignon: It could happen. Presumably, if climate change continues on the expected trajectories, species that cannot currently establish

in Scotland might be able to establish in Scotland. We might then need to decide whether it was worth bringing them within the ambit of the 1981 act, rather than dealing with them under the legislation that we are discussing. However, it would not make a lot of difference in practice: an offence under these draft regulations would continue to be an offence under the 1981 act; it would just be that the legislation that controlled it would be different.

09:45

The Convener: We will come to a question from Fin Carson shortly. I understand from reading our papers that the Scottish Government is working in parallel with the other devolved Administrations in doing exactly the same thing. Am I correct?

Mairi Gougeon: Yes.

Finlay Carson: You may have answered this question already, in response to Mark Ruskell. Will the new regulations change any other Government policies or priorities when it comes to controlling giant hogweed, for instance? There is a competitive system, if you like, for getting funding to control it. In my opinion, that does not work particularly well. We can spend two or three years controlling giant hogweed, but if we do not get funding for the next year, it all comes back. Will the draft regulations in any way affect the Scottish Government's policies and priorities for controlling the likes of giant hogweed?

Mairi Gougeon: That will always be a massive priority for us, given the challenges that we face with biodiversity. It will continue to be a priority for us in tackling invasive non-native species. In my opening remarks I outlined the impact that the problem is estimated to have, with about £250 million a year of expenditure involved. Tackling that problem must remain a priority for us, regardless of the draft regulations.

Finlay Carson: So, the regulations will not take future policy in a different direction.

Mairi Gougeon: No. Even when we leave the EU, we would still wish to do what we can to tackle all the invasive non-native species. That would absolutely remain a priority for us.

Mark Ruskell: It is welcome to hear from the minister that the matter is a priority, but I understand that the specific funding for tackling giant hogweed that comes from the Scottish Environment Protection Agency and Scottish Natural Heritage has, in effect, been pulled. That is a big issue for river trusts that are trying to tackle the problem on a co-ordinated catchment basis. I would appreciate your thoughts on how we ensure that the matter is indeed a priority, as the money does not seem to be there.

Mairi Gougeon: I echo what I said to Finlay Carson. Considering the wider impact, the fact that we are facing a climate emergency, the report on the threats to biodiversity, the fact that there will be a lot happening next year in Scotland in relation to biodiversity and the hosting of the conference of the parties to the Convention on Biological Diversity in Glasgow, the matter must remain a focus for us. We must constantly look at how to tackle such issues.

The Convener: Under the second item on our agenda, I invite the minister to move motion S5M-18216.

Motion moved,

That the Environment, Climate Change and Land Reform Committee recommends that the Conservation (Natural Habitats, &c.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft] be approved.—[*Mairi Gougeon*]

Motion agreed to.

09:48

Meeting suspended.

09:49

On resuming—

Subordinate Legislation

Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [Draft]

The Convener: Our third agenda item is evidence on the draft Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019. The Minister for Rural Affairs and the Natural Environment, Mairi Gougeon, is staying with us. She is joined by Elspeth Macdonald, the Scottish Government's policy adviser in this area. I invite the minister to take us through the draft instrument.

Mairi Gougeon: Thank you. The regulations amend section 57 of the Environmental Protection Act 1990 to ensure that ministers' power to direct holders of a waste permit to accept, keep, treat or dispose of waste covers all kinds of permits.

Currently, under section 57, ministers have the power to direct holders of a waste permit to accept, keep, treat or dispose of waste. However, that power does not extend to holders of permits that were issued under the Pollution Prevention and Control (Scotland) Regulations 2012, including, for example, larger industrial installations and waste incinerators. The power also does not extend to operators that rely on exemptions from the waste management licensing regime. Essentially, the regulations will rectify that so that all operators that handle waste can be subject to the power of direction.

Section 57 is a failsafe provision that is for use in circumstances in which the normal regulatory powers fall short or have been exhausted, such as where sites have been abandoned or where an operator becomes bankrupt. It can be used only to prevent harm to human health or the environment.

The power has—so far—not been used, but, as the Cabinet Secretary for Environment, Climate Change and Land Reform stated in her letter to the committee,

"In circumstances where the UK may be leaving the EU without a deal then there is a greater risk of failures in the market, and a greater risk that Ministers will need a viable power to direct waste holders and operators on the treatment and disposal of waste."

The power of direction can be exercised only for the purpose of preventing damage to human health or harm to the environment.

I am happy to take any questions that the committee has on the regulations.

Stewart Stevenson: I am trying to get my mind around the scope of the regulations. I have a specific question relating to the disposal of hospital waste and the difficulties that arose when a commercial company that was involved in that failed. Are such issues caught by the regulations? Will there be a new regulatory regime around such situations? In particular, as I understand it, a lot of hospital waste—perhaps all of it—is subject to incineration, to which the minister made specific reference. Is that caught by what is proposed? Would the regulations have been of benefit in dealing with the situation that we found ourselves in, albeit that that related not necessarily to a failure of waste management but to the commercial failure of a company?

Mairi Gougeon: I am sorry—I will hand over to Elspeth Macdonald for that question.

Elspeth Macdonald (Scottish Government): The power that is in existence now would not have applied in the circumstances that Stewart Stevenson talked about. However, the power of direction would apply in such circumstances in future. Nonetheless, the power of direction would only ever be used as a power of last resort. Members may be aware that SEPA, the liquidator and various other parties are involved in sorting out the issue that Stewart Stevenson talked about, so I cannot answer the question fully. However, the extension of powers would add the power of direction to the list of options that are available to deal with such a situation.

Mairi Gougeon: I emphasise that, as I said in my opening statement, we are talking about a failsafe power; it is not a power that we have had to use under the 1990 act. However, in preparing and considering contingency plans for Brexit, we realised that the area needed to be rectified so that all handlers of waste are covered by the same regulations.

Rachael Hamilton: Three out of four respondents to the Scottish Government's website consultation commented on the lack of an appeal mechanism. I think that it was you, minister, who considered that there was no need for a right of appeal. Will you talk the committee through why you consider that not to be necessary?

Mairi Gougeon: A few different issues were raised through the consultation, one of which was the lack of an appeal process; another was a point about consultation.

Essentially, this is a failsafe power and one that we would use only in an emergency to protect the environment or human health, and the fear is that an appeal process could delay the taking of action. If we were in extreme circumstances in which we were talking about threats to human health and the environment, we would need the power to be

able to take action immediately, rather than having to wait and face the potential consequences if there was a delay.

Rachael Hamilton: I want to go into that a bit further. As an example, let us say that immediate action is taken because there is a threat to human health or the environment, but the situation involves a commercial or industrial business going into liquidation or bankruptcy. What happens if there is a right of appeal but nothing is found? How would that business have any comeback?

I know that we are talking about a different power, but would it be related in any way to a situation in which there was found to be no threat to human health or the environment? Is that just something that would move on past this?

Mairi Gougeon: I am sorry—I want to try to understand the question. Are you asking whether that would supersede—

Rachael Hamilton: Yes.

Mairi Gougeon: Are you asking how we would determine an immediate threat to human health or the environment?

Rachael Hamilton: Yes.

Mairi Gougeon: With regard to issues that arise just now, we are in constant discussions with SEPA, and SEPA is in constant discussions with all the waste operators. Therefore, I would hope that we would never find ourselves in that situation—and, luckily, so far we have not. Are you asking about what would happen if a company went bankrupt during the process of having to deal with the waste and looked at the situation afterwards?

Rachael Hamilton: It is a possible situation. You have just said that the power is a failsafe and has never been used. It is perhaps a hypothetical scenario, but I am trying to work out what would happen. You believe that there will never be a problem, but perhaps a company that was subject to the power might want an appeal. There is a clear issue here, because three or four respondents to the consultation questioned the lack of such a right, and there were only 10 respondents in total. Nearly half those who responded asked why there was no right of appeal. There must be a reason behind that, regardless of whether the power is just a failsafe.

Mairi Gougeon: I understand why people may wish to consider an appeal or have it as an option. However, I say again that if we were facing a scenario in which there was a threat to human health or a significant threat to the environment, we would need to have the power to be able to take action immediately. I do not know how long an appeal process could take. The regulations are

about ensuring that we have the power to deal with such immediate threats.

Elsbeth Macdonald: The power would only ever be used if there was, in the view of Scottish ministers, clear evidence of such a risk. They would take advice from SEPA and anybody else who chose to give evidence, but the power would not be exercised in isolation in any sense whatsoever. The alternative of harm being caused to human health or the environment would, in such circumstances, outweigh the suggestion of a right of appeal.

Mark Ruskell: Is the instrument preparing for a predicted increase in incineration?

Mairi Gougeon: As I said, we have been going through contingency planning for Brexit, and that is what the regulations are designed to deal with. Going through that process flagged up that some waste operators—for example, the larger industrial installations and those under the specific exemptions that I mentioned—should be covered by the power of direction. We are really just ensuring that all operators of waste are subject to the same direction.

Finlay Carson: I have a simple question. Is there any predicted increase in cost to waste operators with the introduction of the power?

Mairi Gougeon: We would not expect there to be an increase in cost.

The Convener: As everyone has finished asking questions, we move to the fourth item on the agenda. I invite the minister to move motion S5M-18936.

Motion moved,

That the Environment, Climate Change and Land Reform Committee recommends that the Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 [draft] be approved.—[*Mairi Gougeon.*]

Motion agreed to.

The Convener: We will have a short suspension to allow the minister and her officials to leave.

10:00

Meeting suspended.

10:00

On resuming—

European Union (Withdrawal) Act 2018

Environmental Liability etc (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/276)

The Convener: The fifth item on our agenda is to consider whether the Environmental Liability etc (EU Exit) (Scotland) (Amendment) Regulations 2019 have been laid under the appropriate procedure. The instrument has been laid under the negative procedure. Is the committee content for it to be considered under the negative procedure?

Members indicated agreement.

Subordinate Legislation

Environmental Liability etc (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/276)

Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 (SSI 2019/271)

10:01

The Convener: The sixth item on our agenda is consideration of two negative instruments: the Environmental Liability etc (EU Exit) (Scotland) (Amendment) Regulations 2019 and the Environmental Protection (Cotton Buds) (Scotland) Regulations 2019. Does anyone have any comments on either?

Mark Ruskell: On the environmental liability regulations, it would be useful to have some clarity on whether, if the regulations are used, the information is to be made public. It would also be useful to know whether the regulations are compliant with the Aarhus convention, which relates to public involvement in accessing environmental information and protecting the public's rights to that information.

The Convener: We can flag that up with the Scottish Government. However, the clerks have just directed me to paper 2, which mentions that point. Government officials said that

"the Scottish Ministers ... or the competent authority providing a notification under the new reporting requirements under the Environmental Liability (Scotland) Regulations 2009 ... would intend to make the information forming the subject of the report available publicly, as soon as reasonably practicable, after the provision of a report."

Do you need any further clarification than that?

Mark Ruskell: My first point is that that is not written into the regulations. It appears to be a policy position: the Government would prefer to release the information, but it is not written into the regulations. Secondly, we should ask whether the regulations, as drafted, are compliant with the Aarhus convention, which sets out specific requirements for the release of environmental information. It would be useful to find out what diligence has been done in relation to Aarhus.

The Convener: Are you content for me to sign off a letter to the Scottish Government on that?

Mark Ruskell: Yes.

Claudia Beamish (South Scotland) (Lab): I welcome SSI 2019/271, on cotton buds. It is a good step forward. As I started to read the regulations, I wondered what would happen to companies that manufacture cotton buds in Scotland, but it turns out that there are no such

companies in Scotland. However, it was reassuring that a business and regulatory impact assessment had been carried out. That begs a question about what will happen as we work through the other SSIs that we will inevitably need to consider and which relate to something that is manufactured by companies in Scotland. They might lead to re-tooling or loss of jobs. I wanted to highlight that point.

The Convener: Yes—in principle, we should be considering BRIAs.

Claudia Beamish: We need to be aware of BRIAs.

Rachael Hamilton: I was out with Berwickshire marine conservation rangers at Coldingham yesterday, and we picked up loads of cotton buds and plastic straws. The problem is not just what people drop on the beach, but what comes in from the sea.

I wanted to make the same point, which is that we cannot be prescriptive about the products in relation to which regulation is recommended in future. Currently, we do not manufacture cotton buds in Scotland, so there is no financial implication for Scotland. However, Claudia Beamish is right to raise the point. We want to be a country that manufactures sustainable, environmentally friendly products, but without direction in regulations, how can we be sure that we are taking Scotland in the right direction? It is not something for inclusion in regulations, but perhaps there should be some guidance.

The Convener: Are you content that the negative instrument is appropriate for cotton buds?

Rachael Hamilton: Yes, I am content. I just wanted to raise that point.

The Convener: Okay, you have made that wider point.

Is the committee agreed that it does not wish to make any recommendations in relation to the instruments, other than to write to the Scottish Government to get Mark Ruskell's points clarified?

Members indicated agreement.

Stewart Stevenson: Can I just check that we are agreeing to both sets of regulations?

The Convener: Yes, we are.

Claudia Beamish: With the agreement of the committee, when we write to the Scottish Government, we could highlight that, as these instruments come forward, if a BRIA shows that we have a manufacturer of a particular product in Scotland, the issue of support and advice for such a company should be considered. It would be valuable to highlight that.

The Convener: Okay. Thank you. If there are no other comments, I will move on.

10:06

Meeting continued in private until 11:26.

At our next meeting on 1 October, the committee will hear further evidence from stakeholders as part of our biodiversity inquiry. We will also consider two public petitions and the committee's future work programme.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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