



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 16 December 2020

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

34th Meeting 2020, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)

*John Finnie (Highlands and Islands) (Green)

*Emma Harper (South Scotland) (SNP)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*Angus MacDonald (Falkirk East) (SNP)

Oliver Mundell (Dumfriesshire) (Con)

*Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Fergus Ewing (Cabinet Secretary for Rural Economy and Tourism)

Jamie Halcro Johnston (Highlands and Islands) (Con) (Committee Substitute)

Lewis Kerr (Scottish Government)

James Muldoon (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Virtual Meeting

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 16 December 2020

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]

The Convener (Edward Mountain): Good morning, and welcome to the 34th meeting in 2020 of the Rural Economy and Connectivity Committee. I ask everyone to ensure that their mobile phones and house phones—if they are at home—are on silent. The meeting will be conducted in a virtual format. Apologies have been received from Oliver Mundell. Jamie Halcro Johnston is attending as a committee substitute.

Agenda item 1 is subordinate legislation. The committee will take evidence on the draft Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020, which are an affirmative instrument. The motion seeking the approval of the instrument will be considered under agenda item 2. Members should note that there have been no representations to the committee on the regulations.

I welcome the Cabinet Secretary for Rural Economy and Tourism, Fergus Ewing; Lewis Kerr, who is a lawyer from the Scottish Government's legal directorate; and James Muldoon, who is head of the Scottish Government's agriculture support policy development unit.

Good morning, cabinet secretary. Would you like to make an opening statement on the draft regulations?

The Cabinet Secretary for Rural Economy and Tourism (Fergus Ewing): Good morning, and thank you for the opportunity to make an opening statement. I thank the committee for taking the time to consider the draft regulations, which are very important.

The draft regulations were laid using the powers conferred by the European Union (Withdrawal) Act 2018 and the Agriculture (Retained EU Law and Data) (Scotland) Act 2020, and they are mainly technical. They will not make any significant changes to the retained European Union legislation that will govern rural development in Scotland and the Scottish rural development programme from 2021. They are designed to

maintain the current structure of the rural development programme as far as practicable from 2021, on the assumption that Her Majesty's Treasury will wholly replace funding that would otherwise have come from the EU through the European agricultural fund for rural development.

The regulations will help to ensure that, for 2021 and subsequent years, we can make rural support payments and continue to operate our rural development schemes in Scotland. That is the primary function of the regulations; they are about process, not policy. By passing the regulations—I hope that that will occur—we will continue to provide some stability and continuity for our farmers, crofters and land managers for the period from 2021 to 2024.

The regulations will also simplify and improve the operation of the retained EU common agricultural policy legislation where appropriate, and will correct outstanding deficiencies that result from the EU exit to ensure continued operation from the end of the transition period.

My officials and I are happy to answer any questions that committee members might have.

The Convener: Thank you very much, cabinet secretary. At the moment, I see only one question lined up, which is from John Finnie.

John Finnie (Highlands and Islands) (Green): Good morning. I have a question about organic farming. I am blessed with having a briefing paper; I appreciate that these matters are very technical.

Regulations 4(6) and 4(7) amend articles 28 and 29 of the rural development regulation so that agreements on agri-environment and climate and organic farming can be made for a period of one to seven years. In Scotland, that refers to the agri-environment climate scheme and the organic conversion and maintenance schemes. Under current EU law, agreements between a land manager and the Scottish Government last for a period of five to seven years, during which time the land manager must carry out specified management interventions to benefit the environment, or as part of converting to or managing an organic holding.

The significant point is that the period is being changed from five to seven years to one to seven years. I did not see mention of the change in the explanatory note, so it is not clear why the change has been made, or what consultation—if any—there has been. In addition, no further information has been provided on situations in which management agreements for fewer than five years are being considered.

Will you or your officials comment on that, please? I have no objection to the change in

principle, and I will support the regulations, but some clarification would be helpful.

Fergus Ewing: I will, in a moment, pass over to Mr Kerr, as the solicitor, because Mr Finnie's question is largely technical, and I would like Mr Kerr to give a technical answer.

Obviously, the Scottish Government has been, and will continue to be, supportive of organic farming. Roseanna Cunningham and I recently discussed the future of the agri-environment climate scheme—or AECS. Mr Finnie is well aware of that scheme, which includes support for organic farming. Obviously, we believe that that should continue to be the case, at an appropriate level.

Without straying into political arguments—I do not think that doing that would be appropriate in discussing this technical amendment—the benefit of the EU programme for a scheme such as the SRDP relates to the long-term nature of that scheme, which is more than seven years long. That long-term nature is consistent with most environment schemes. Indeed, many farming developments take more than one year to come to fruition, so the clarity and certainty of knowing that funding was available over a longer period was a beneficial characteristic of the scheme that we were leaving. It is not yet clear whether a multi-annual approach will be favoured in future. However, as I said, I do not want to stray into politics.

With the convener's consent, I will pass over to Mr Kerr to answer Mr Finnie's reasonable technical question.

Lewis Kerr (Scottish Government): The Government's position is to introduce, through the amendments, additional flexibility in the timescales for which the commitments can be entered into. I ask James Muldoon to add a little bit of detail on the policy rationale behind that decision.

The Convener: Do you want to come in on that, James?

James Muldoon (Scottish Government): Yes, I am very happy to.

The core reason is the flexibility that was mentioned. The cabinet secretary noted that the SRDP scheme, which is an EU-related programme, provides committed funding for a period of seven years, which allows for a five to seven-year programme to be designed. The policy rationale for changing the period is to allow flexibility for the expected on-going commitment from Her Majesty's Treasury to provide funding. Although we do not have a seven-year period for that funding, we need to ensure that the flexibility is built in so that we can have shorter-term programmes for that at present.

The Convener: Does that answer your question, John? Are you satisfied, or do you want to push the matter further?

John Finnie: No. I am grateful to the cabinet secretary and his officials for those responses, and I will leave it at that.

The Convener: Jamie Halcro Johnston has a question. As the topic is agriculture, I think that he might want to remind members of his interest in that area before he asks his question.

Jamie Halcro Johnston (Highlands and Islands) (Con): I was ready to do that, convener, but thank you for reminding me. I draw members' attention to my entry in the register of members' interests, particularly in relation to my being a partner in J Halcro-Johnston and Sons, which is a farming business.

I have a quick question. One of the changes removes the requirement for the Scottish ministers to amend the Scottish rural development programme by legislation and allows for it to be amended administratively. Will you explain any scrutiny-related issues that such a change might raise?

Fergus Ewing: First, it would be correct to welcome Mr Halcro Johnston to his new responsibilities as the rural economy spokesperson for his party. I look forward to seeking to work constructively with him.

Secondly, most of the decisions that we take with regard to the SRDP are administrative, but the question about scrutiny is apt. Obviously, we are subject to scrutiny right now, and we are subject to it continuously by the committee, as is appropriate. We are also subject to scrutiny in the chamber though oral questions, questions on statements and debates. That will continue.

Generally, scrutiny looks at the principles of what we are seeking to do and the political discussion about what the right choices are. I do not think that there is any suggestion that the passage of the regulations will in any way diminish the Parliament's ability or right to scrutinise my actions or decisions or those of my colleagues in the Scottish Government.

The Convener: One of your officials would like to come back in on that point. With your consent, I will bring in Lewis Kerr.

Lewis Kerr: I would like to add a little bit of context about the current processes. Any limitations on the type and frequency of amendments that may be made to the rural development programme remain unchanged as a result of the Scottish statutory instrument. The provision that we are dealing with has come about as a result of deficiency fixes under UK statutory instruments, which effectively step down the

legislation-making requirements. Those are currently carried out by the European Commission. The Scottish Government's position is that that is not necessary at the domestic level and adds an undue administrative burden—hence the amendment.

The Convener: Does that answer Jamie Halcro Johnston's question?

Jamie Halcro Johnston: It does, convener. I am grateful to the cabinet secretary and to Mr Kerr for that clarification.

The Convener: There do not appear to be any other questions, so we will move to item 2, which is formal consideration of motion S5M-23437, in the name of the Cabinet Secretary for Rural Economy and Tourism. I invite the cabinet secretary to move the motion.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 [draft] be approved.—[Fergus Ewing]

Motion agreed to.

The Convener: I thank the cabinet secretary and his officials for their time.

European Union (Withdrawal) Act 2018

Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020

Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc) Regulations 2020

Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020

Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc) Regulations 2020

10:13

The Convener: Item 3 is the sift of four Brexit-related SSIs. The Scottish Government has allocated the negative procedure to the SSIs. Is the committee content with the parliamentary procedure that has been allocated to the instruments by the Scottish Government? I see general nods.

Subordinate Legislation

Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020

Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc) Regulations 2020

Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020

Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc) Regulations 2020

10:13

The Convener: Item 4 is consideration of the four negative instruments. The Delegated Powers and Law Reform Committee considered the instruments. No issues were raised in relation to three of them, but the Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc) Regulations 2020 were reported under the general reporting ground. The committee may wish to note that the Scottish Government has undertaken to correct the error by correction slip. No motions to annul have been received in relation to the instruments.

Does any member have any comments to make? I do not see any member wishing to make a comment.

I propose that the committee report that it does not wish to make any recommendations in relation to those negative instruments. As no member has indicated otherwise, I take it that that is agreed.

Plant Health (Amendment) (EU Exit) Regulations 2020

Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020

The Convener: Under items 5 and 6, we have received consent notification in relation to two United Kingdom statutory instruments. The instruments are being laid in the UK Parliament in relation to the European Union (Withdrawal) Act 2018. Both instruments have been classified as category B.

The clerks have brought issues to our attention in the papers. In relation to the plant health regulations, the committee had previously been advised that a summary of the plant health framework would be available by the end of 2020.

We might wish to ask the Scottish Government when we will see the summary.

In relation to the Official Controls (Animals, Feed and Food, Plant Health etc) (Amendment) (EU Exit) Regulations 2020, the committee might wish to make the point in responding to the Scottish Government that the timescales given for the scrutiny of that category B instrument were totally inadequate. It was submitted to the committee on 14 December for consideration on 16 December. There is no chance of delaying, because it has to be reported on by the Government on 18 December.

The committee might also wish to note from the correspondence that the Scottish Government is planning to send the provisional common framework on animal health and welfare by the end of next week. The provisional framework will go live on 1 January, which means that the committee will have no time to consider the framework before it goes live. From a scrutiny perspective, that is far from ideal for such a significant framework.

I have said quite a lot. Do committee members wish to comment?

Richard Lyle (Uddingston and Bellshill) (SNP): I take on board your comments, convener, but when did the Scottish Government receive the instruments?

The Convener: The simple answer is that I do not know. I can report only when we were given them.

Richard Lyle: I take on board your comments, but it depends on when the Scottish Government received the instruments. There is a chain, and if the start of the chain is late, the Scottish Government will be late. If we are going to make comments, we should make them to the person who started the chain.

The Convener: Absolutely.

Maureen Watt (Aberdeen South and North Kincardine) (SNP): Good morning, everybody. Following what Richard Lyle said, I do not want to write to the Scottish Government to ask why the instruments were so late, because we know why they were—they were coming down the chain from Westminster. Scotland did not ask for all those SIs in relation to exiting the EU, and it is unfair to say to the Scottish Government, which is already dealing with the Covid situation, that civil servants should get the instruments to us in a timely fashion when they probably do not get them from Westminster in a timely fashion.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): Convener, I align myself with the remarks that you have made but, in properly highlighting the limited time that we had for looking

at the instruments, we should attribute the reason for that to no one because, at the moment, we do not know who is responsible. However, that is a perfectly reasonable point for the committee to make.

The Convener: The point that committee members have reasonably made is that we do not know the reasons why the instruments are late; we just know when we were given them. Therefore, it is right that the committee questions whether there is sufficient time for scrutiny within the timescale. I do not think that I suggested that we should blame the Scottish Government or that it would be right for the committee to do so because, as Stewart Stevenson said, we have no idea of the process. Those are all good points.

I suggest that the committee writes to the Scottish Government to confirm that it is content for consent to be given to the UK statutory instruments referred to in the notification and to highlight the additional points about the lack of time for scrutiny that we have discussed, without indicating who we think is to blame, because we do not know that at this stage. However, we need to note that two days is really not enough time for the committee to carry out scrutiny.

Do we agree to do that? I am getting nods of agreement. That is therefore agreed.

I do not wish to detain you too much longer, but I just want to say that this is—I hope—our last meeting before the Christmas period. It has been an incredibly busy and difficult year, not only because of the amount of work that we have had but because of the constraints that Covid has put on the committee. On behalf of the committee, I recognise that the past three months have been especially busy for our clerks, who have had to produce two reports—a substantial ferries report, and a report on a piece of legislation—which they have done in quick time. Therefore, I would like to record our thanks to them for all their work in supporting us. I hope that they and committee members will get a reasonable break over Christmas. I also thank committee members for their support, which allows me to do my job as convener.

Our next meeting will be on the morning on 13 January, when we will take evidence on rail services from Abellio ScotRail.

That concludes our business. I wish all members of the committee and our support teams a very happy Christmas.

Meeting closed at 10:21.

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