

# **RURAL DEVELOPMENT COMMITTEE**

Tuesday 12 June 2001  
(*Afternoon*)

Session 1

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## RURAL DEVELOPMENT COMMITTEE

15<sup>th</sup> Meeting 2001, Session 1

### CONVENER

\*Alex Johnstone (North-East Scotland) (Con)

### DEPUTY CONVENER

\*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

### COMMITTEE MEMBERS

\*Mrs Margaret Ewing (Moray) (SNP)  
\*Alex Fergusson (South of Scotland) (Con)  
\*Rhoda Grant (Highlands and Islands) (Lab)  
\*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)  
\*Richard Lochhead (North-East Scotland) (SNP)  
\*George Lyon (Argyll and Bute) (LD)  
\*Dr Elaine Murray (Dumfries) (Lab)  
\*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)  
\*Elaine Smith (Coatbridge and Chryston) (Lab)

\*attended

### WITNESSES

Rhona Brankin (Deputy Minister for Environment and Rural Development)  
Lydia Wilkie (Food Standards Agency Scotland)

### CLERK TO THE COMMITTEE

Richard Davies

### SENIOR ASSISTANT CLERK

Tracey Hawe

### ASSISTANT CLERK

Jake Thomas  
Neil Stewart

### LOCATION

Committee Room 3



## Scottish Parliament

### Rural Development Committee

*Tuesday 12 June 2001*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:16*]

**The Convener (Alex Johnstone):** Ladies and gentlemen, thank you for your attendance. Because of our briefing session, we are starting rather later than usual.

### Committee Business

**The Convener:** The first item for discussion is next week's reporters' paper on future committee business. That could be described as a housekeeping matter, as the paper will set out the views of reporters on the programming of committee time after the summer recess and beyond. As the paper will be in draft form, do members approve of it being discussed in private?

**Members** *indicated agreement.*

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** Can I be clear that that does not set a precedent?

**The Convener:** That is right.

**Mr Rumbles:** So each such decision will be taken as it comes?

**The Convener:** Indeed.

## Subordinate Legislation

**The Convener:** For agenda item 2, I welcome Rhona Brankin, the Deputy Minister for Environment and Rural Development, who is here to move motion S1M-1952 on the draft Consumer Protection Act 1987 (Product Liability) (Modification) (Scotland) Order 2001. The minister is accompanied by Lydia Wilkie and Samantha McKeown of the Food Standards Agency Scotland.

The order is an affirmative instrument, which means that it cannot be made unless the Parliament, by resolution, approves the draft. As lead committee, our role is to decide whether to recommend that the draft instrument be approved. Before the minister formally moves the motion, I invite her to give a brief explanation of the order. If it is required, I will invite the officials to answer any technical questions.

**The Deputy Minister for Environment and Rural Development (Rhona Brankin):** The order extends the system of strict liability to cover primary agriculture products and game. It implements into Scottish law the requirements of a European directive. The strict liability system was introduced in the United Kingdom by the Consumer Protection Act 1987 and currently covers all production areas across manufacturing, including food that has been processed in some way. Primary agriculture products and game—that is, food in its raw state—were not included at the time as there was concern that such produce might be more prone to hidden defects that were beyond the control of the producer, for example defects that were caused by environmental factors. However, in 1999, the decision was taken at European level that those who were covered by the original directive could, equally, face such problems and that it was reasonable to ensure that primary food producers were also included.

The liability system allows consumers of goods to sue manufacturers for damages without having to prove that the producer was negligent—for example, if faulty material was used in a product and the producer was not aware of the defect, but the ultimate consumer was injured.

The order extends liability to cover primary producers in Scotland, such as farmers, fruit and vegetable growers and people working in fisheries. Liability will also cover importers of such products from non-European Union countries. The order is a necessary implementation of an outstanding European directive that is already in place in England and Wales. The delay in implementation in Scotland and Northern Ireland has resulted in the commencement of European Commission infraction proceedings, as the extension should have been applied by December last year.

The order, which has been subject to consultation, remedies the underimplementation of European requirements. I am happy to answer any questions.

**The Convener:** Thank you. Are there any questions for the minister or the officials?

**Rhoda Grant (Highlands and Islands) (Lab):** How would the order affect scallop fishermen if there were an outbreak of amnesic shellfish poisoning? It can take about a week for test results to come in, so, if a box was not closed, fishermen could harvest fish and sell them on without knowing that ASP was present.

**Rhona Brankin:** Scallop is a processed food, so it would be up to the courts to decide at what stage there was a problem. If a box was not closed, the producers would be unaware—

**Rhoda Grant:** So they would not be liable if they were not aware of the problem?

**Rhona Brankin:** They would be unaware and they would not be liable under environmental—

**Lydia Wilkie (Food Standards Agency Scotland):** They would be able to register the defence that they had taken all reasonable precautions to ensure that the product was correct when they sold it. That would include their responsibility under the current directives and under our own laws on end-product testing. They could use that defence in the courts if any action was taken against them. It would then, of course, be for the courts to decide.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** I am sure that we all wish to support the aims of the order. I would like clarification on one point. Is it correct that the imposition of strict liability does not mean that there would be automatic liability, but that any person suing a primary producer would have to prove that the product—the food—was in fact defective for such an action to be successful? If that is correct, will the minister explain the standard of proof that will be required to say that the food was defective?

**Rhona Brankin:** The injured person must be able to prove that the product in question was defective and that, on the balance of probabilities, the defect in the product caused the injury. They must be able to prove that the product was produced by the person against whom the action is being brought. The burden of proof rests with the consumer.

**Lydia Wilkie:** The detail would be for the courts to decide once the person who had been taken to court had registered the defence. The courts would determine the level of proof required.

**Fergus Ewing:** Would not there be huge

practical difficulties in a court action in relation to meat, for example, that was allegedly defective? It may well be impossible to prove who had produced the meat.

**Rhona Brankin:** In terms of traceability?

**Fergus Ewing:** Yes.

**Rhona Brankin:** At the moment, we do not have complete traceability. Work is going on in Europe to bring us up to speed on that.

**Lydia Wilkie:** It would be up to the person who was raising the action to ensure that they could trace effectively back to the primary producer. If it was in some area where the food had actually been processed, it would be covered by current legislation. The problem would have to have been caused by food in its raw state. I do not know whether that answers your question.

**Fergus Ewing:** It is an answer—of a sort.

The minister mentioned that infraction proceedings are in train against the UK. Are there any other EU states that have not implemented strict liability for primary produce and producers?

**Rhona Brankin:** I do not know the answer to that question.

**Lydia Wilkie:** My understanding is that Scotland and Northern Ireland are the countries outstanding at the moment. I could not guarantee that there are no others.

**Dr Elaine Murray (Dumfries) (Lab):** My question relates to game. As you know, game is normally shot. If someone purchases game that has been shot and cracks their dentures on it, is the person who allowed the shoot to take place liable?

**Rhona Brankin:** No. When game has been shot, it can be expected to contain traces of shot. It would be appropriate for the producer to point that out. Similarly, it would be normal to expect to find bones in fish, so the producer would not be liable.

**Mrs Margaret Ewing (Moray) (SNP):** Paragraph 11 of the explanatory memorandum from the Food Standards Agency refers to insurance, which is an important issue for the industries that we are discussing. I know from personal experience that farmers have great difficulty in insuring crops, which are included under this legislation because they are products of the soil. You said that the legislation has been implemented in England and Wales, and that it was difficult to extrapolate the cost of product liability. However, if the legislation has been implemented in other European countries, is not it possible to determine whether the cost of insurance policies has risen in those countries and how often the policies have been claimed on?

That is important information.

**Rhona Brankin:** We have consulted bodies such as the National Farmers Union, which say that it is difficult to provide a figure for that. They also say that product liability is usually part of a larger business insurance package, which makes it hard to extrapolate the cost. I do not know whether specific information is available from other countries, such as England and Wales.

**Lydia Wilkie:** When we failed to receive an initial response from the producer organisations, we targeted a number of them specifically to get a handle on this matter. We knew that that would be difficult, because it had been difficult south of the border. We also consulted a couple of mutual companies, which said that the cost of product liability varied from business to business. All the organisations that were consulted, with one exception, took the view that the majority of their members would be covered for product liability. They did not supply figures that suggested that it would be an economic problem for their members.

**Mrs Ewing:** What was the one exception?

**Lydia Wilkie:** It was the Scottish Fishermen's Organisation, which said that there might be a problem. However, it could not quantify the problem.

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** I would like clarification about traceability, particularly of products that have been imported from other countries. On whom does the onus lie? Is it for the supplier here to provide information on the chain back to where the product originated?

I believe that the order is due to come into force in July. What impact will it have on products that are already in the food chain? Will they be affected by it, or does it relate solely to new products that come on to the market after the order has come into force?

**Rhona Brankin:** For products that come in from other countries, the liability is with the importer. The order will apply to products that enter the food chain after it has come into force in Scotland—on 19 July.

**Richard Lochhead (North-East Scotland) (SNP):** First, can you give us examples of how the fact that this legislation has not been in force since 1985 has disadvantaged consumers? Secondly, why has the instrument come before the Rural Development Committee, rather than the Health and Community Care Committee, given that it relates to unprocessed foods and their impact on consumers?

**Rhona Brankin:** The legislation is part of an overall drive to improve the framework of consumer protection relating to food safety that

exists in this country. I cannot give specific details of cases that have been brought. Lydia Wilkie may have some information on that.

14:30

**Lydia Wilkie:** We have no information that would suggest that there has been an upsurge in cases against primary producers. The vast majority of the food produced is already covered by legislation, because it has been processed in some way.

Product liability is industry focused, rather than food safety focused. There is an historic reason for having the Food Standards Agency promote the issue, dating back to before the establishment of the FSA. We had the expertise and, because there was imminent risk of an infraction, we took the work forward. This is not a question of food safety as such.

**Richard Lochhead:** I return to the point about the need for the legislation. There appears to be no reason for the fact that the instrument has just appeared before us. Have we simply been instructed by the European Union to approve the order? Can you think of any cases that would justify its coming before the Parliament?

**Rhona Brankin:** It was agreed unanimously by the member states of the EU that the legislation would strengthen consumer protection. No one would disagree with that.

**Fergus Ewing:** I want to pursue the issue of traceability. Obviously, there are differences in the supply chain between meat that goes for sale in small butchers shops and meat that is sold in supermarkets. I imagine that in small family-run butchers shops—such as that where, as a committed carnivore, I frequently purchase meat of all descriptions—the butcher will be able, in every case, to say exactly where the meat came from. Frequently they do that, and most interesting it is. In supermarkets the reverse is true, and there is uncertainty about precisely where the meat has come from. Under this legislation, will the small butcher face a greater risk of being sued? Will the butcher, as well as the farmer from whom they purchase, be liable? If a supermarket is not clear on where a cut of meat has come from, will not it be far more difficult for a consumer to bring an action against it?

I am not anticipating any actions because, like the minister, I am convinced of the extremely high quality of Scottish meat produce. However, the questions that I have asked follow from the instrument and I would like to know the answers to them.

**Rhona Brankin:** I do not accept Fergus Ewing's assertion that traceability is more difficult for meat

that is bought in supermarkets. I understand that the work in that area is usually done well. However, we still have some way to go. The meat that is bought in butchers shops is a processed product, so it would be up to the courts to decide where the problem lay. It could lie at different stages of the food chain.

**Fergus Ewing:** Does that mean that family butchers will not be able to be sued under this statutory instrument?

**Rhona Brankin:** That would depend on whether the problem lay with the processor or with the person who produced the primary product. It would be up to the courts to decide.

**Lydia Wilkie:** As a retailer, the family butcher is already covered by legislation. That is the main point. If the retailer is unable to demonstrate traceability back to the primary producer, they will become responsible.

**Fergus Ewing:** So the supermarket will have to be able to show where all its meat has come from.

**Rhona Brankin:** Yes.

**Fergus Ewing:** If 50 different farmers are selling meat to a supermarket, how will it be possible for the consumer to trace it back?

**Rhona Brankin:** The supermarket will be required to have traceability.

**Cathy Jamieson:** As I understand it, the onus is on supermarkets to ensure that they are purchasing from reputable sources. That is a good thing, and I wholly support it.

**The Convener:** Are there any further questions or points that members wish to put to the minister? If not, I ask the minister to formally move motion S1M-1952.

*Motion moved,*

That the Rural Development Committee recommends that the draft Consumer Protection Act 1987 (Product Liability) (Modification) (Scotland) Order 2001 be approved.—[*Rhona Brankin.*]

*Motion agreed to.*

**The Convener:** Under agenda item 3, we have three more statutory instruments—SSI 2001/178, SSI 2001/179 and SSI 2001/186. The instruments have all been considered by the Subordinate Legislation Committee, which made no comments for our consideration. Do members have any concerns about the instruments?

**Alex Fergusson (South of Scotland) (Con):** I am puzzled, because SSI 2001/178 is revoked by SSI 2001/186, assuming that SSI 2001/186 is passed. I assume that that is because we are considering the instruments retrospectively.

**The Convener:** They are part of a series of

instruments, which, I remind the committee, came into force as soon as they were laid.

**Alex Fergusson:** The cessation date for SSI 2001/178 was 18 May, which makes me wonder why we are considering it, and the cessation date for SSI 2001/186 is in a week's time.

**The Convener:** We are not expected to approve the instruments; we are simply given the opportunity within a time limit to comment on them. They can even be commented on retrospectively.

**Alex Fergusson:** That is what I have been doing. Other than that, I have no great problems with them.

**The Convener:** Notwithstanding Alex Fergusson's comments, can I assume that no one has anything to say on the instruments? As probably the only committee member who knows anything about artificial insemination in cattle, I assure members that I have read SSI 2001/179 thoroughly, and I approve of it.

**Mr Rumbles:** Was that a declaration of interest?

**The Convener:** It is not a registrable interest. If there are no concerns about the instruments, and there are no comments, are members content to make no recommendations on the instruments in our report to Parliament?

**Members indicated agreement.**



## Consultative Steering Group Principles

**The Convener:** Item 4 on the agenda is the Procedures Committee's inquiry into the application of the consultative steering group principles in the Scottish Parliament. The Procedures Committee has invited all committees to contribute to its inquiry into the extent to which the CSG principles are being implemented in the Parliament. The principles are power sharing, accountability, accessibility and equal opportunities.

Members will have the opportunity to comment personally, if they wish. This exercise gives committees an additional opportunity to present evidence. If members feel that they can make useful contributions to the inquiry, I suggest that they send me a note of the issues that might be included in a committee response, and I will ensure that the comments are drawn together for submission. Would members like to raise specific issues now? If not, do members agree to the proposal?

**Members** *indicated agreement.*

**The Convener:** That brings us to item 5 on the agenda, which the committee has agreed to take in private.

14:39

*Meeting continued in private until 17:10.*



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