

RURAL DEVELOPMENT COMMITTEE

Tuesday 7 January 2003
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE

1st Meeting 2003, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)

*Richard Lochhead (North-East Scotland) (SNP)

*Mr Jamie McGrigor (Highlands and Islands) (Con)

Mr Alasdair Morrison (Western Isles) (Lab)

*John Farquhar Munro (Ross, Skye and Inverness West) (LD)

Irene Oldfather (Cunninghame South) (Lab)

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

George Lyon (Argyll and Bute) (LD)

Mr John McAllion (Dundee East) (Lab)

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

John Scott (Ayr) (Con)

*attended

WITNESSES

Ross Finnie (Minister for Environment and Rural Development)

David Milne (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone

LOCATION

Committee Room 3

Scottish Parliament

Rural Development Committee

Tuesday 7 January 2003

(Afternoon)

[THE CONVENER *opened the meeting at 14:01*]

The Convener (Alex Fergusson): Right, ladies and gentlemen, without further ado we will commence this meeting of the Rural Development Committee. I welcome members and the Minister for Environment and Rural Development.

We have an apology from Fergus Ewing. I hope that I will be permitted to put on record my and, I am sure, the committee's great sympathy for the Ewing family at this tragic time. It was an awful thing that we heard about yesterday. It is correct that our sympathies be placed on the public record.

We also have apologies from Irene Oldfather and Mike Rumbles. Other than that, and apart from welcoming you all back after the recess, I ask you to check that mobile phones are switched off.

Subordinate Legislation

Seeds (Miscellaneous Amendments) (No 2) (Scotland) Regulations 2002 (SSI 2002/564)

The Convener: Item 1 is subordinate legislation. We have one instrument to consider. On 17 December 2002, we decided to seek evidence from the minister on issues that arose from the Seeds (Miscellaneous Amendments) (Scotland) Regulations 2002 (SSI 2002/520). Questions were raised about whether the relaxation of labelling and packaging rules for certain seeds could result in contamination by genetically modified organisms. The minister, Ross Finnie, kindly agreed to give evidence today.

Subsequently, because of drafting errors, the Executive replaced the regulations with the Seeds (Miscellaneous Amendments) (No 2) (Scotland) Regulations 2002 (SSI 2002/564). An Executive memorandum to the Subordinate Legislation Committee to explain the drafting change has been made available to members. We understand that the new instrument has the same policy intentions and content as the original. The minister agreed that it would be appropriate to give evidence on the new instrument.

The Subordinate Legislation Committee has yet to consider the new instrument, so we cannot make a formal decision today on whether to make any recommendation on the regulations. The formal decision will have to be made at a later date once the Subordinate Legislation Committee has completed its consideration. However, it is in order for us to consider the policy intention of the instrument in advance and to take evidence from the minister thereon. On that note, I again welcome Ross Finnie, the Minister for Environment and Rural Development, and Executive officials Simon Cooper and Charlie Greenslade.

The Minister for Environment and Rural Development (Ross Finnie): I am pleased to have the opportunity to speak to the committee on the Seeds (Miscellaneous Amendments) (No 2) (Scotland) Regulations 2002. I apologise to the committee for the inconvenience that may have been caused. The original regulations contained a numbering error and therefore had to be replaced. However, the purpose of the regulations remains the same, as do, I suppose, the committee's concerns.

The regulations derived from European decision 94/650/EC, under which the Commission organised a temporary experiment—lasting seven years, from September 1994 to August 2001—on the marketing of seed loose in bulk to the final consumer. I am bound to say that the industry in

Scotland and indeed the UK as a whole was not interested in supplying seed in bulk at that time and so did not participate in the experiment.

The results of the experiment led the Commission to conclude that the marketing of seed under such arrangements had no adverse effects on quality. Council directive 2001/64/EC was introduced on 31 August 2001 to allow the measures to be made permanent in respect of fodder plant seeds and cereal seeds by amending the respective directives. The new directive required that its provisions be transposed into national legislation by 1 March 2002.

In view of the considerable lack of interest shown by our industry, territorial departments throughout the United Kingdom delayed introducing domestic legislation pending a planned review of seed inspection and certification procedures. Unfortunately, the timetable for completing the review slipped and we decided to press ahead with making a separate amending instrument.

I was prompted to do so by the European Council legal service's advice that the directive must be implemented by member states, regardless of the fact that the directive appears to be discretionary. Our non-implementation was included in an article 226 letter and, more recently, in a reasoned opinion.

The Seeds (Miscellaneous Amendments) (No 2) (Scotland) Regulations 2002 are therefore intended to amend the Cereal Seeds Regulations 1993 (SI 1993/2005) and the Fodder Plant Seeds Regulations 1993 (SI 1993/2009) to allow marketing of certain kinds of cereal seed and fodder plant seed in bulk.

At present, the principal regulations require that seed be marketed and transported in packages or containers that are sealed in such a way that the package or container cannot be opened without destroying the seal. The amending regulations will allow certain categories of certified cereal seed and certified fodder plant seed to be drawn from bulk containers and transported loose directly to the final consumer. However, the amending regulations also require that seed sold under such arrangements be transported to the final consumer in a closed container.

The bulk seed would also require to be accompanied by a note delivered by the supplier to the final customer containing the information that appears on the official label. The regulations also provide for random samples to be taken during the filling of the container. The extent of use of the exemption will be monitored, as the quantities of seed marketed in bulk will require to be notified by the seller to Scottish Ministers at the end of each calendar year.

Committee members have expressed concerns that permitting loose transportation may increase the risk of seeds being contaminated. They particularly expressed concern about the potential for cross-contamination with GM seeds.

The first point to repeat is that the regulations specifically require that the seed be transported in a closed container to the final consumer. The regulations use the same wording as in Commission decision 94/650/EC. The purpose of the rules in the decision is to ensure that the container is closed in such a way that the seed cannot be contaminated. If seed is in a properly closed container, nothing should be able to contaminate it. To reinforce that point, it is intended that my department will issue guidance to the trade when the regulations come into force.

There is no requirement under Commission decision 94/650/EC or directive 2001/64/EC for the cleaning of containers. It is accepted good husbandry and the seed buyer's responsibility to ensure that containers are cleaned thoroughly before and after they are used to store seed.

Section 57 of the Scotland Act 1998 requires Scottish ministers to comply with Community law. The regulations fulfil that obligation. Regulations to implement the directive in England come into force on 31 January 2003. Amending regulations came into force in Wales on 24 December 2002 and regulations are planned for Northern Ireland. Therefore, Scotland will complete the United Kingdom's obligation to introduce the regulations.

I trust that there is an understanding of the legal obligations of the suppliers and purchasers of seed, especially in relation to the containers. The use of the word "loose" was perhaps an unfortunate interpretation of the transportation method. The regulations are explicit: although the seal may have been broken, the final form of transportation must be in a closed container.

The Convener: The Executive notes contain a list of all the bodies that were brought into the consultation process before the preparation of the instrument. Did any of the consultees query the purpose of the statutory instrument?

Ross Finnie: No.

The Convener: None of them queried its purpose.

Ross Finnie: I would qualify that by explaining that there has been a certain lack of interest in the matter. The Executive is not aware of purchasers in the UK, especially Scotland, who wish to avail themselves of the measure.

Stewart Stevenson (Banff and Buchan) (SNP): Happy new year, minister. I know that you have other important items on your agenda, so I hope that I will not detain you too long. The UK did

not participate voluntarily in the European seven-year trial, but were any significant factors, especially the risk of cross-contamination from GM crops, taken into account in the drafting of the regulations?

Ross Finnie: I cannot stress enough the need to draw back a bit and consider the obligations of suppliers and those who purchase their seed. Under the Sale of Goods Act 1979, suppliers are required to supply seed that is fit for purpose. When seed is taken out of a sealed container, a sample must be taken. The sample is a safety valve, as it were, which allows suppliers to prove that, when the seal was broken, the seed was not contaminated.

Purchasers pay good money for seed. Therefore, if they decide that they wish to buy seed in a different form from what is normal practice, it is in their interests to ensure that that seed is carried to their premises in sealed containers, which ensure that the seed does not become contaminated. I appreciate that that is not a legal requirement, but purchasers who ignored that would be willingly permitting seed that they were buying for a specific purpose to become contaminated. I suggest that that is not in either party's interest.

Stewart Stevenson: I agree with you about the sale of goods legislation and the interests of the purchaser. On the delivery of seeds in closed but unsealed containers, after a container has been loaded and the batch sample tested, will the new arrangements permit deliveries from the container to multiple customers?

14:15

Ross Finnie: No.

Stewart Stevenson: So the regulations specifically allow the closed but not sealed container to go only from the point where it is loaded and tested to a single point of delivery.

Ross Finnie: If you look at regulation 3(2), you will see that the answer to that question is yes.

Stewart Stevenson: That is fine. Thank you.

On the more general question of GM contamination, have any specific tests been done to discover whether the nature of the closure of the containers that are now closed but not sealed is adequate to prevent contamination en route or otherwise by GM pollens and other small particles?

Ross Finnie: I will ask Simon Cooper to address that point. If you had read what the previous regulations said, you would understand that an unbroken seal satisfied someone only that a container had not been opened. The unbroken

seal did not convey that a container was hermetically sealed. The seal was merely a physical embellishment on a package that assured a purchaser that the package had not been interfered with. The absence of a seal does not change the nature of the closure of a container. The only difference is that the previous regulations provided a legal requirement for a closed container to bear a seal. However, the word "seal" did not convey a sense of hermetic or any other type of sealing.

Stewart Stevenson: For the avoidance of doubt, I confirm that that was my understanding. I assume that the containers are the same containers, and that they operate to the same standards and in the same way.

Ross Finnie: They could be.

Stewart Stevenson: I was not pursuing that point. The regulations are being changed, so I am simply taking the opportunity to examine something that might not have been examined before in relation to the transport of seeds in such containers. I acknowledge that the absence of a seal does not in itself change the risk of contamination. I am merely taking the existence of the change as an opportunity to examine that particular issue. That is where I am coming from.

Ross Finnie: Okay. The only point that I would make is that it is clear that the regulations do not provide assurances against potential contamination. We are not required, nor is it in our interest, to gold-plate. The important issue is the nature and style of the containers, which are manufactured by the producers and the sellers. Mr Stevenson and I agreed on the effects of the Sale of Goods Act 1979. I appreciate that his current concern might be about potential contamination from GMOs. In the seed industry, it is possible for a variety of other matters to contaminate seeds, so the containers are designed with contamination in mind. It is not in the interests of a seed manufacturer or supplier to deal in contaminated seeds.

Stewart Stevenson: You said that the regulations do not require the containers to be cleaned between different uses. Should we be concerned that that might create the opportunity for contamination? For example, do the containers return unemptied but closed or empty but open? Are the operational parameters such that we need have no concerns or would it be appropriate to consider regulations in that regard?

Ross Finnie: That would mean introducing regulations whose provisions were in excess of those required by the directive, which raises a different issue. I have been very much guided by our department's close discussions about industry practice. I am bound to say that the industry is in

no way dismissive of those points. The clear contention of the industry in Scotland, with which we have close contact, is that seed purity is important.

Stewart Stevenson: Absolutely.

Ross Finnie: Therefore, the industry puts its own reputation at risk, as, indeed, do producers, if they do not abide by good husbandry practice. It is our clear understanding that such a procedure forms part of good husbandry practice.

The Convener: Does any other member have questions on the instrument? The minister does not want to make any closing remarks, therefore I thank him and conclude this item by reminding members that the committee will formally consider the instrument in two or three weeks' time, when the Subordinate Legislation Committee has reconsidered it.

Agricultural Holdings (Scotland) Bill: Stage 2

The Convener: Agenda item 2 concerns stage 2 of the Agricultural Holdings (Scotland) Bill. Although the committee will not begin stage 2 of the bill until next week, under rule 9.7.4, the committee must decide the order in which the bill will be considered, unless the Parliament has decided the order. The motion in the name of Ross Finnie suggests an order of consideration. I invite the minister to move the motion formally and to make any introductory comments that he wishes to make.

Ross Finnie: I appreciate that this procedure is a little unusual. I certainly do not want to suggest that I am trying to tell the committee how to run its business; I merely crave the committee's indulgence in trying to make what I hope, after hearing me, the committee might regard as a helpful and constructive suggestion.

I propose that the committee considers the bill according to the sequence of the bill in most respects, except to move back consideration of part 2, on the right to buy, and the anti-avoidance provisions concerning the use of partnerships in part 6.

I make that constructive suggestion for the following reason. At stage 1, the committee deliberated on whether it should consider what action the Executive proposed to take in response to concerns recently expressed by tenants. Those concerns involved matters such as compensation to tenants at waygo and other issues, which are all contained in paragraphs 76 and 77 of the committee's excellent stage 1 report. I had already undertaken to consider those issues, which appear in part 2 of the bill. If the committee were to move consideration of part 2 towards the end of its consideration of the bill, that would enable the committee to consider my amendments.

The stage 1 report specifically asked me to lodge those amendments as quickly as possible. I regret that I have not been able to finalise them yet. My department has met relevant persons in groups representing those with a right to buy, the Scottish Landowners Federation and the National Farmers Union of Scotland. Following those meetings, considerable progress has been made not just on the detail of the drafting but on addressing the points that are summarised in paragraphs 76 and 77 of the committee's stage 1 report. I hope to be able to meet the committee's requirement to lodge amendments in that regard very shortly.

Part 6 of the bill contains the anti-avoidance provisions in relation to partnerships. The major outstanding issue concerns whether general

partners within limited partnerships who are the legal tenant under the Agricultural Holdings (Scotland) Act 1991 should be eligible to exercise the right to buy. Again, I seek the committee's indulgence in moving back consideration of that issue, because we are still awaiting final detailed legal advice on the issues relating to a possible extension of the right to buy to include general partners within limited partnerships. That could fundamentally affect my decision on how to proceed, and it would greatly assist me to have just a little additional time to deal with those issues before coming before the committee.

The committee could consider both aspects in a perhaps more informed way if it had the benefit of my being able to have some additional time. Given the nature of the bill, I appreciate that such jumping about is awkward, but I hope that such an arrangement would allow me more properly to meet the requirements that were set out in paragraphs 76, 77 and 43 of the committee's report. If the committee were to agree to such a reordering, I would certainly undertake to submit suitable amendments in time for the committee to give them its full consideration.

I move,

That the Rural Development Committee considers the Agricultural Holdings (Scotland) Bill at Stage 2 in the following order: Part 1, Parts 3 to 5, Part 7, Part 6, Part 2, Part 8, the schedule.

The Convener: I thank the minister for that. I should have declared my interest as a limited partner in an existing partnership agreement. Despite that interest, I am sympathetic to the reasons that the minister has given for the suggested order of consideration. My view is that the minister has asked for time to consider the serious concerns that the committee has raised, and it would be churlish of us to rush into anything when the minister is still in consultation with stakeholder groups from the industry. If agreement can be reached on matters, they will be looked upon considerably more favourably than might otherwise be the case.

Rhoda Grant (Highlands and Islands) (Lab): I share that view. However, I want to know how soon we will be able to see the Executive amendments, which we will obviously need time to consider. Our report had some sympathy with the Scottish Tenant Farmers Action Group, but we held back from making a decision on the issue until we saw the Executive amendments. It would be helpful to see the Executive amendments soon, so that we can see whether they meet the needs of that group.

Ross Finnie: I am cognisant of the need for me to produce the amendments. Obviously, I am already over the time that was laid down in the committee's report. As the convener mentioned, in

addition to trying to ensure that the wording of the amendments is legally correct, we have sought to draft the amendments in such a way as to achieve a consensus among the several interests that we originally consulted. That has added just a day or two. David Milne might have a rough idea of when we will be able to lodge the amendments, but we will do so as soon as possible.

I understand the situation. I am asking the committee to grant me time, so, in good faith, I must allow the committee to have adequate time for an informed discussion before it comes to a conclusion on those two important parts of the bill. I appreciate that the committee must have time to debate them, and that it is also very much in my interest to lodge the amendments as quickly as I can.

David Milne (Scottish Executive Environment and Rural Affairs Department): The various industry groups are due to meet again tomorrow. At this stage, we cannot suggest that they will reach agreement among themselves tomorrow, but should there be agreement in principle, and a need for just a little more time to work out the legal issues, we could perhaps advise the committee at least of the policy intention.

Ross Finnie: We hope that the Christmas break has had a consensual impact on the parties.

The Convener: I would not want to do anything to disturb that. As I made clear at the end of my speech in the stage 1 debate—from which the minister was, sadly, absent, for obvious reasons—anything that can be achieved by consensus should be welcomed. I remain of that opinion. If a little more time is required to reach that consensus, as convener of the committee, I would not want to stand in the way of that happening. However, I accept Rhoda Grant's point that, the sooner we can be informed, the better the input that we can make to the process.

If no other member wishes to comment, can I take it that the motion is agreed to?

Motion agreed to.

That the Rural Development Committee considers the Agricultural Holdings (Scotland) Bill at Stage 2 in the following order: Part 1, Parts 3 to 5, Part 7, Part 6, Part 2, Part 8, the schedule.

The Convener: I apologise to David Milne for not welcoming him to the committee. It is nice to have him here, even if it is for a brief time. I thank the minister and his officials for their attendance and wish them a good afternoon.

I remind members that the deadline for lodging amendments for the first marshalled list, which will deal with parts 1 and 3 of the bill, is 2 o'clock on Friday 10 January. Currently, no amendments have been lodged.

We previously agreed to take item 3 in private,
so I instruct the room to be cleared.

14:29

Meeting continued in private until 16:56.

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