



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Tuesday 26 June 2012

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
17th Meeting 2012, Session 4

CONVENER

Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Graeme Dey (Angus South) (SNP)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*Jim Hume (South Scotland) (LD)

*Richard Lyle (Central Scotland) (SNP)

Margaret McDougall (West Scotland) (Lab)

*Dennis Robertson (Aberdeenshire West) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andy Crawley (Scottish Government)

Nigel Don (Angus North and Mearns) (SNP) (Committee Substitute)

Ron Macdonald (Scottish Natural Heritage)

Stewart Stevenson (Minister for Environment and Climate Change)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Committee Room 4

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Tuesday 26 June 2012

[The Deputy Convener *opened the meeting at 10:00*]

Subordinate Legislation

The Deputy Convener (Annabelle Ewing):

Welcome to the 17th meeting in 2012 of the Rural Affairs, Climate Change and Environment Committee. I request that members and members of the public turn off their mobile phones and BlackBerrys, as leaving them in flight mode or on silent will affect the broadcasting system.

We have received apologies from the convener, Rob Gibson, for whom I am deputising and Nigel Don is substituting, and from Margaret McDougall.

Wildlife and Natural Environment (Scotland) Act 2011 (Consequential Modifications) Order 2012 [Draft]

The Deputy Convener: Under agenda item 1, we will take evidence from the minister on a draft Scottish statutory instrument that has been laid under the affirmative procedure, which means that the Parliament must approve it before provisions may come into force. Following this evidence-taking session, the committee will be invited to consider the motion to approve the order.

I welcome the minister and his officials: Catherine Murdoch, who is the policy officer in the wildlife management, wildlife and protected areas, natural resources division of the directorate for environment and forestry—that is quite a mouthful—and Andy Crawley, who is a lawyer in the legal services directorate. We are also joined by Ron Macdonald, the head of policy and advice at Scottish National Heritage.

I ask the minister to speak to the instrument.

The Minister for Environment and Climate Change (Stewart Stevenson): Sorry to correct you, but it is Scottish Natural Heritage—I know that the agenda says “National”, but there we are.

Thank you for the chance to say a few words about this order. It makes minor amendments to primary and secondary legislation, all of which are in consequence of changes that were made by the Wildlife and Natural Environment (Scotland) Act 2011.

As you might expect, the order removes references in primary legislation to acts that were

repealed by the 2011 act and revokes a snares order that has been superseded by the 2011 act. It ensures that references to licensing are brought into line with the changes to the licensing functions that were made by the 2011 act—in terms of the fact that we may now delegate licensing functions to Scottish Natural Heritage and local authorities, and in terms of the activities for which one can obtain a licence that would otherwise be unlawful under the 1981 act. It also ensures that the enforcement functions in the Marine (Scotland) Act 2010 cover all the relevant new offences created by the 2011 act. Finally, it provides a new definition of “game” in orders that refer to a definition that was contained in an enactment that was repealed by the 2011 act.

The order does not take forward any new policy. However, I am happy to take questions on any of the modifications that it contains.

The Deputy Convener: As committee members have no questions, I invite the minister to move motion S4M-03158, which asks the committee to recommend approval of the affirmative instrument. There is an option for formal debate, which can last up to 90 minutes, but we shall see whether that comes to pass.

Motion moved,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Wildlife and Natural Environment (Scotland) Act 2011 (Consequential Modifications) Order 2012 [draft] be approved.—[*Stewart Stevenson.*]

Motion agreed to.

“Code of Practice on Non-Native Species”

10:04

The Deputy Convener: The next agenda item is evidence from the minister, with the same panel of officials, on the “Code of Practice on Non-Native Species”. Although the code is not legislation, it has been laid under the affirmative procedure, which means that Parliament must approve it. Following this evidence session, the committee will be invited to consider the motion to recommend approval of the code. I invite the minister to speak to the code of practice.

Stewart Stevenson: I am delighted to introduce the code of practice to the committee, as it marks a step change in the way in which Scotland deals with the threat of non-native species. The code and the changes to the law that it supports are designed to protect Scotland from further introductions of invasive species, whose current cost to the country is in excess of £250 million every year.

The code seeks to help individuals, businesses and public bodies to act responsibly when they deal with non-native species. We are not suggesting that all non-native species should be removed from Scotland, as that would be not only impossible but undesirable. We rely heavily on non-native species: they are our food crops, timber crops, livestock and the plants in our gardens. However, we must acknowledge that non-native species also include the signal crayfish, which is devastating lochs in Scotland, and Japanese knotweed, which is taking over our river banks, to name but two.

With the Wildlife and Natural Environment (Scotland) Act 2011, we have changed the way in which non-native species will be dealt with in Scotland by creating offences that align with what is commonly referred to as the precautionary approach to non-native species. That approach focuses on preventing the introduction of any non-native species, not just those that we know might be a problem elsewhere or even those that we might think will become a problem. We do that because, with many species, we simply cannot tell for sure whether they will be invasive. Japanese knotweed is a perfect example of that, as it took more than 100 years to become the problem that we have now.

In the 2011 act, we have created a set of powers that will allow us to control the most risky species. For example, if we find that the risk of escape of a certain exotic pet species is a real threat, we can prohibit or control the keeping or sale of the species. Alternatively, if we think that

requiring a certain group of people to report sightings of a species would help Scotland's response to its introduction, we can require them to make those reports.

All that means a change in what is expected of those who manage land or own animals and even those of us who have a passion for gardens. The code seeks to clarify what those expectations might be. It sets out what some of the terms that are used to frame the new offences mean. For example, it explains the term “native range”, which people would not have needed to think about previously, and outlines what kind of land is considered to be non-wild in relation to planting non-native plants. Non-wild land is land that is managed intensively and frequently enough that we could reasonably expect any non-native species that is planted there to be recognised and prevented from spreading. I am pleased that my garden will not require to be rethought.

The code also explains which activities are unlikely to be caught by the new offences. For example, in relation to the release of animals, it is clear that letting a dog off its lead does not count as a release, as that would be unreasonable when the person has every expectation of regaining control of the dog and taking it home with them. Similarly, falconry is not seen as releasing a bird of prey. In those situations, the person expects to retrieve the animal, so for the purposes of the act it is not considered to be released.

As the code seeks to provide advice to a wide range of people in differing circumstances, it cannot go into great detail on all the species or situations that people might need to consider. However, it outlines which organisations are responsible for which habitats and provides guidance for those who seek further advice.

In providing an outline of the new terms and concepts in the 2011 act, setting out the responsibilities of organisations such as SNH and providing sources of further advice, the code will be a valuable resource for those who own, manage or are otherwise responsible for non-native species, and particularly those whose activities might inadvertently be increasing the threat to Scotland from non-native species.

There is a telephone number that anyone who requires advice can call. It is 08452 30 20 50.

I am happy to answer any questions that the committee has on the code and the context in which it has been created, or members can pop out and phone the number right now.

The Deputy Convener: Thank you, minister. I think that we have all carefully made a note of the 0845 number—

Stewart Stevenson: 08452 30 20 50.
[Laughter.]

The Deputy Convener: Okay. I think that we have that, minister. Thank you. I understand that that is perhaps a parliamentary first, so I am glad that it happened at our committee.

We move on to a question-and-answer session on the code. A couple of members have indicated that they wish to ask questions.

Richard Lyle (Central Scotland) (SNP): Good morning, minister. I will put that number into my phone directly.

I welcome the code of practice, but what control do we have and what action can we take if we find that people have introduced something to the country? Specifically, I am looking at the information on species control agreements, which are commonly known as SCAs, and species control orders. The code of practice states:

"A Species Control Agreement ... is a voluntary agreement which may set out;

- what must be done
- by whom and
- by when

in order to control an invasive non-native plant or animal.

There is no penalty for non-compliance".

Will you or Catherine Murdoch, with her long title, tell us what would happen to someone who introduced such a species and what action we could take to remedy that?

Stewart Stevenson: The first thing to grasp is that it is not forbidden to introduce non-native species to managed land. The second point is that there is a hierarchy of interventions and the species control agreement is the first of them. As the code of practice states, through the species control agreement, we seek to establish what must be done, by whom and by when in relation to an invasive non-native plant or animal. In the majority of cases, that should be sufficient to place a ring around it. However, we have further interventions, such as the orders that can be made. They are made not by the Parliament but by SNH—I am just checking that with my colleague to my left. Beyond that, the hierarchy goes all the way up to, eventually, criminal proceedings.

As this is inevitably an area in which there is potential for some complexity, we make information available and we have ways of interacting with people to help them to understand their role in preventing another Japanese knotweed. Paragraph 2.11 of the code of conduct includes a graph that shows that Japanese knotweed was not a problem from 1850, when it came here, to 1940, but that it then suddenly took off. Every single Japanese knotweed plant in

these islands has exactly the same DNA, so it is perfectly possible that they all come from a single plant, although that is not known for certain. The effects of such things can be considerable, and they can be delayed and uncertain. Nobody thought that Japanese knotweed was going to be a problem when it was introduced, and the same can be true of other things.

Graeme Dey (Angus South) (SNP): I will make a small point, minister. In section 10 of the code, "Non-Native Species—Which Body is Responsible", the paragraph on woodlands says:

"A partnership approach may be taken for some species".

What protocols and arrangements are in place for interagency co-operation in such situations? We all know the difficulties that can arise at times. Who would take the lead? How would it happen in practice?

10:15

Stewart Stevenson: Let me say a couple of things to set the context on woodlands. In general terms, woodlands are not regarded as managed. They are of course managed in one sense but, for the purposes of the order, they are not regarded as managed. Therefore dealing with non-native species in the special case of woodlands is a bit different in that the non-native species that we may legally put on woodland are described in a specific list and there is a process by which that list can be extended if and when it is required. In relation to woodland, the environment is a bit different.

Ron Macdonald (Scottish Natural Heritage): I chair the framework of responsibilities for public bodies and we have key representatives of each of the organisations, including Forestry Commission Scotland. Underpinning that is a protocol. There is also the 0845 number that the minister kindly gave. Someone who phones in is quickly directed to the lead organisation for a habitat. For woodlands, it is Forestry Commission Scotland.

Beyond that, SNH has an overarching co-ordinating function. We are very keen that nobody should be in any doubt when they phone the 0845 number. Backing that up is a protocol, and all the public bodies are working closely together on the basis of the SEARS—Scotland's environmental and rural services—principles.

Stewart Stevenson: It is worth making the point that we recognise that there could be complexities for those who have to implement the code, which is why we have established a single point of contact. In other words, we will ensure that people are directed to the right source of advice, rather

than people having to try to work it out and possibly being unsuccessful.

Alex Fergusson (Galloway and West Dumfries) (Con): I will purposefully not broadcast that telephone number in my part of the world for fear that the lines might become overheated. I say that because of something that the minister mentioned in his introductory comments, which is the American signal crayfish. As he is aware, signal crayfish have become so well established in various parts of Scotland, particularly Loch Ken in my constituency, that many people would no longer consider them to be non-native. Frankly, the whole idea of control of that particular non-native species has become something of a joke because, to all intents and purposes, it cannot be controlled. I have met the minister and others on the issue and it is now generally accepted by bodies such as SNH that these things are here to stay.

The same could be said for Japanese knotweed—it is everywhere now. Once we reach that stage and a species has become so well established that it is effectively endemic, where do we go from there? Surely there is a point at which we can see that controls have not worked, that a species is here to stay and that we therefore have to look at the issue in a different light. In the case of the American signal crayfish, there is a strong case to be made for a properly controlled commercialisation of the species.

I am not making a plea for that at this point, but I am beginning to think that there are stages at which codes of practice and legislation—be it subordinate or primary legislation—are a waste of time when it comes to controlling these things.

I also wonder whether we are unwittingly making criminals of people. According to my notes, section 14ZC(1)(a) of the 1981 act

“makes it an offence for any person to keep, have in their personal possession or have under the person’s control any invasive animal”.

As I am sure everybody knows, American signal crayfish happily travel up to 2 miles overland at night from one watercourse to another or from one loch or pond to another. People may unwittingly have American signal crayfish on their property and therefore—I would imagine—legally under their control, but one is not allowed to touch them. Part of me wonders whether we have really thought this through properly. How do we address the situation before these things take over all of Scotland’s waterways, without wanting to get too melodramatic about it?

Stewart Stevenson: I have a couple of points in response. The American signal crayfish will be defined as non-native for ever. Indeed, rabbits are non-native, even though they have been here for

2,000 years. However, the substance of Mr Fergusson’s remarks is about the management of invasive species, which is the essential point. The real issue is that we have no plan that can eliminate species such as the American signal crayfish. We have tried such elimination and it has been tried south of the border, but it is unlikely to succeed.

Commercial exploitation of a non-native species has been tried south of the border, but it was not successful. There is a tension between trying to manage down the numbers of such species and the risk of commercial exploitation sustaining their populations. It is thought that commercial exploitation could lead to their further spread. Indeed, we can look back in time at issues that arose with mink, which we are probably on the verge of eliminating from the long island—Harris and Lewis. However, it has taken many years and a lot of money to do that. Commercial exploitation will not necessarily always be the way forward.

I am told that section 14ZC(1)(a) of the 1981 act refers only to lists in orders and that the American signal crayfish is already restricted. The fundamental point that exercised the member was signal crayfish from somewhere else being in waters that are within someone’s land. The member should be assured that, in terms of the code, someone is not in control of, or responsible for, crayfish simply because they happen to be within their land. However, we would hope that co-operating in trying to eliminate the crayfish would be part of the landowner’s duty. The responsibility for the crayfish, though, goes back to the person who introduced them, not to the person who is affected by their spread; to argue otherwise would be irrational. We might require that people report the presence of invasive species, but failure to do so is not a criminal activity—[*Interruption.*] Perhaps I am going to get a qualified view on that. Do you want to speak, Andy?

Andy Crawley (Scottish Government): It would require a further order of the Parliament—of the minister, rather, to make it an offence. There is an enabling power in that regard that has not been exercised as yet.

The Deputy Convener: Does that answer your question, Mr Fergusson?

Alex Fergusson: No.

Stewart Stevenson: I do not expect to be able to satisfy Mr Fergusson in this regard, because it is clear that he quite properly wants the elimination of signal crayfish from his constituency or for it to become a commercial asset. However, I am not sure that either of those objectives can be readily delivered.

Alex Fergusson: I take the minister’s point, but the crayfish affect more than just my constituency,

to be fair, because they are now widespread in Scotland. My view on the issue is not purely driven by a commercial desire. When people report the presence of crayfish, the problem is that no action can be taken. I do not mean this as a criticism of SNH, but the only action at the moment is to hand out leaflets to fishermen asking them to clean their gear before they go home in order to try to limit the spread of something that is spreading like wildfire. My hackles are slightly raised by the passing of orders such as this one that, in effect, have no impact at all on the spread of an invasive species. I will leave it at that.

Stewart Stevenson: I draw the member's attention to those involved in water sports. To make as many of them as possible aware of the problem, we launched a scheme last August—I think—called the check, clean, dry campaign. That encouraged people to purge their boats, jet-skis and so on of any species that they might have picked up at a location that they had been in before returning home or, at least, to ensure that they had removed any species. People do not require to know whether species are invasive; it is just good practice to do those things.

I have just been reminded that we have a rapid response protocol, which could result in action when something is found in a new catchment. However, I return to the point—of which the member is well aware—that we do not have a meaningful intervention that helps with American signal crayfish. Anyone who can identify such a measure that is short of destroying the entire environment in which the signal crayfish exists—massive options might do it—will have the heartfelt thanks of many people.

Jim Hume (South Scotland) (LD): You might have partly answered my questions. Paragraph 2.21 of the code says that

“the release or planting, keeping and sale”

of non-native species

“are strict liability offences”

unless, as you said, it is clear that they are kept in what we would reckon to be a garden or a zoo. Species such as *Rhododendron ponticum* and Japanese knotweed are quite widespread and are on land that is not part of gardens. I declare an interest as a farmer and I look for reassurance that landowners and farmers who have rhododendrons or Japanese knotweed on their land will not be liable for that, as such plants have invaded their land.

Stewart Stevenson: I will make a distinction, which I made earlier, between managed land and wild land. If a species is on someone's land, their duty is limited to preventing its spread. A farmer who has rhododendron—ditto Japanese

knotweed—is not expected to take any action, although they could take action at their own hand. The farmer's duty is to prevent the further spread.

It is worth looking at the next paragraph in the code. You are correct about strict liability, but the next paragraph says:

“However, a person accused of a release, planting or keeping offence may successfully establish a defence if they ... show that they took all reasonable steps and exercised ... due diligence to avoid committing the offence.”

As part of their normal husbandry, professional land managers such as farmers are likely to be able to establish such a defence, because they will not particularly wish Japanese knotweed or rhododendron to take space that could otherwise be occupied by productive farming. In practice, I do not expect that an issue is likely to arise for farmers or even that a dramatic change in practices will be needed.

The bottom line is preventing the spread; eradication is not being required. Of course, advice can be sought if a farmer wishes to undertake eradication.

Jim Hume: I know from experience that Japanese knotweed is difficult to control. After several applications of glyphosate over several years, the plant can still spread.

Stewart Stevenson: Japanese knotweed spreads via the rhizome. Unless every part of the rhizome is removed, the plant will return. Of course, the rhizome can be deeply embedded and difficult to find.

Jim Hume: Removal can cause more problems.

Stewart Stevenson: Indeed.

Jim Hume: Applying glyphosate is the recognised method.

Stewart Stevenson: It is worth making the point that advice should be sought on disposing of what is dug up.

Jim Hume: People must watch out next to watercourses in particular. If one little rhizome goes down the river, it will take root somewhere.

Stewart Stevenson: The member's points are well made. The professional farmer has made an appropriate and useful contribution to the discussion.

Jim Hume: I shall rest my case.

The Deputy Convener: In addition to the 0845 number, perhaps Mr Hume would like to release his number.

Jim Hume: I will give you my mobile number later. I will not repeat it now.

10:30

Claudia Beamish (South Scotland) (Lab): Good morning to you all.

I want to ask about the concerns that have been expressed to me in the South Scotland region about the spread of grey squirrels in relation to red squirrels. I know that the issue is a Scotland-wide one. Until now, I thought that the red squirrel was a native species, but rabbits have been here for a long time, and I am not quite sure why they are not a native species. Perhaps that is a side issue.

As the minister will know, there has been some success with the corridors in South Scotland, and there has been the decision to cull, of course. Is it possible for the committee to be given an update on that now or at some point in the future? Obviously, the red squirrel is iconic and very precious.

Stewart Stevenson: Indeed. I am happy to write to the committee on what we are doing on squirrels more generally. That would be appropriate.

The member is, of course, absolutely correct to point out that the grey squirrel is a non-native species. It carries squirrel pox, which is generally thought to be responsible for mortality in red squirrels.

We are having some success. There are isolated communities of grey squirrels in the vicinity of Aberdeen, for example, which we are having some success in dealing with, it appears, but in the south, it is often about trying to isolate the colonies. We are having some success in that, but I am happy to provide further information on the subject to the committee. I share the member's interest in the matter.

Nigel Don (Angus North and Mearns) (SNP): My ears pricked up when the minister mentioned rhododendrons. I understand the context in which they were mentioned, but I am conscious that there are members of the public who, like me, are not farmers or managers of anything that resembles a large patch of ground, but merely of a wee area around a hoose. I happily plant things such as rhododendrons in that area because I can get them from the garden centre and quite like them. I am absolutely sure that what we are discussing has nothing to do with those of us who do that kind of thing, but those of us who go to garden centres would like some reassurance that we will not come back with something that leaves us liable.

Stewart Stevenson: You can continue to plant your rhododendrons in your managed land, which is your garden, but it is worth making a distinction on verges, for example. For this purpose, verges in townships are regarded as managed, but

verges in wild areas are regarded as wild. Therefore, if your rhododendrons were to creep under the fence on to a verge in an urban area, for example, that would not constitute any difficulty, but people in rural areas might have to exercise a little care.

Nigel Don: I return to the subject of my ability or the ability of anybody else to go to the local garden centre. Is there any mechanism for assuring me, as a general member of the public who does not know anything about gardening—actually, I know one thing about it: plants will either grow or they will not—that what I buy and use in a normal sense or plant in the normal way is okay? Do I have to worry that I might find an invasive species?

Stewart Stevenson: I will return to 08452 30 20 50, if you wish. Equally, there is a duty on the retailer of the plant concerned, of course. It is worth saying that none of what we are discussing really changes the position with regard to plants in any event. It all comes back to whether the area in which the planting is taking place is wild or non-wild.

Dennis Robertson (Aberdeenshire West) (SNP): With regard to the definition of native and non-native species, particularly in relation to animals such as domestic pets, is the list of what are considered to be native species much smaller than the list of non-native species? Will we perhaps have to reconsider the issue post 2014?

Stewart Stevenson: It is worth making the technical point that there is a third category, which is that of formerly native species. In other words, those are animals that used to be native but which have become extinct and which we might consider reintroducing or which might have been reintroduced. A rather obvious example of that is beavers, which have been reintroduced.

The bottom line is that domestic animals are under our control. Even with cats, which we do not normally think of as particularly susceptible to control, the expectation is that, if someone puts a cat out at night or during the day, the cat will return. Therefore, in the terms of the code, it is under our control. It depends on us for its food and water and so on. As well as the advice through the telephone number that I mentioned, there is further advice on the SNH website. Much of that advice has been put up in anticipation of the sort of discussion that we are having.

The bottom line is that we are taking the precautionary principle: if in doubt, do not release. It is as simple as that, whether we are talking about plants, animals, birds or whatever.

Dennis Robertson: Does the minister agree that, given that domestic animals can stray, as cats often do—perhaps because the food that they

get somewhere else is much more interesting than what they get at home—responsible ownership might move down the road of microchipping?

Stewart Stevenson: I will not rise to that particular bait, as that is a matter for another time. However, it is important to make a distinction. As Mr Robertson knows, animals that are non-native, such as dogs and cats, might be abandoned. In that case, there is deliberate intent to put them into the wild. That would not be covered by what I said earlier. The test is the intention of the person who has control of the animal. If the reasonable expectation is that the cat or dog or whatever will return to the owner—as when a dog is released in a park for a run—even if it does not do so, that does not create an offence. That is the test. There is lots of other legislation related to abandoning animals and animal cruelty.

Dennis Robertson: I note that the minister does not want to rise to my other bait, which was about the situation post 2014, with reference to what is native and non-native.

Stewart Stevenson: What we are doing is distinctly Scottish. In fact, this might be the first time that such measures have been taken to such depth. The approach is already attracting interest from elsewhere.

The Deputy Convener: What plans are there to review the operation of the code in due course and with what frequency will that be done?

Stewart Stevenson: In my comments on forestry, I referred to the potential for extending the list of trees that are non-native species but which might be planted on what is regarded, for the purposes of the code, as wild land. We intend to undertake a consultation on that subject within the next couple of years. Otherwise, we do not at present have a timetable for further consultation or review. However, we will take a close interest in the operation of the code. The code has to go through the affirmative procedure, so it would not be unduly onerous if we detected that it had to be changed or modified. Members should remember that the code does not create law, but merely explains the law and the duties that people have under the law, albeit that it is given force by being debated and, I hope, approved by the Parliament.

The Deputy Convener: As members have no further questions, we move to consideration of motion S4M-03420. We have up to 90 minutes for the debate on the motion, which cannot involve the Government officials.

Motion moved,

That the Rural Affairs, Climate Change and Environment Committee recommends that the Code of Practice on Non-Native Species be approved.—[*Stewart Stevenson.*]

Motion agreed to.

The Deputy Convener: I thank the minister and his officials. I suspend the meeting briefly to allow them to depart.

10:41

Meeting suspended.

10:42

On resuming—

Subordinate Legislation

**Wildlife and Countryside Act 1981
(Exceptions to section 14) (Scotland)
Order 2012 (SSI 2012/173)**

**Wildlife and Countryside Act 1981
(Keeping and Release and Notification
Requirements) (Scotland) Order 2012
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**Poultry Health Scheme (Fees) (Scotland)
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Regulations 2012 (SSI 2012/182)**

**Marine Licensing (Fees) (Scotland)
Amendment Regulations 2012
(SSI 2012/183)**

The Deputy Convener: The next agenda item is consideration of eight negative instruments that are listed on the agenda. Members should note that no motions to annul have been received. I refer members to the agenda and the accompanying papers. Are there any comments on any of the instruments?

Nigel Don: Members will note that three of the first four instruments—I am struggling to get my eyes around the words here—were subject to report by the Subordinate Legislation Committee, which I convene. That report was not very positive because we found some quite substantial errors. The committee is entitled to be concerned that some of the instruments will come into force very soon with quite substantial errors in them, and so members might, under such circumstances, be minded to reject them. However, I can tell the committee that the Government has responded very quickly and produced some amendments.

It is not up to me to pre-empt what the Subordinate Legislation Committee will say about the amendments, but the committee might be

encouraged to note that Scottish statutory instruments SSI 2012/173, SSI 2012/174 and SSI 2012/177 have been amended by the Government, and I suspect that when the Subordinate Legislation Committee meets this afternoon it will be minded to conclude that the Government has done a good job with those amendments.

10:45

The Deputy Convener: Thank you; that was very helpful. I am aware of what Nigel Don has said. Reading through the papers, I see that the Subordinate Legislation Committee had concerns about elements of those three instruments. The Scottish Government accepted that some things needed to be put right and, as Nigel Don said, it has come forward to put them right. The Subordinate Legislation Committee will consider the instruments this afternoon, so the Rural Affairs, Climate Change and Environment Committee might be minded to proceed on that basis. Does any member want to comment?

Richard Lyle: I take Nigel Don's point. Previously, the committee has discussed wrong or inaccurate drafting of instruments and the instruments have been amended later. Based on the information that Nigel Don has given us, I am happy for the instruments to proceed.

The Deputy Convener: Are there any further comments on those three instruments, or indeed on any of the other five instruments?

Nigel Don: I have a slight concern about SSI 2012/178, which I draw to the committee's attention. The Subordinate Legislation Committee's report considers whether the Government has the powers to do what it wants to do under the order. The Government makes a robust case for defending the vires of the order. It has done so before; there have been other similar instruments and, as far as I am aware, they have not yet come to a court. I hope that they never do. I find it interesting that, as a general principle of law, we cannot delegate authority to do things unless there is a specific power to delegate. Anyone who is familiar with law will know that. There is a matter of slight contention about whether the Government is really empowered to delegate as it does in the order.

I note that simply to impress on the committee that this is not the first time that this has happened. The Government holds that line and I think that we have to accept that that is the Government's line, but to note that, in parliamentary process, whether those powers really exist is arguable.

The Deputy Convener: Thank you for that.

Dennis Robertson: I seek some guidance, convener. If the instruments are to be considered by the Subordinate Legislation Committee this afternoon, can we move forward with them this morning? I need clarity on the procedure.

The Deputy Convener: I understand from the clerks that we can and I understand why. We are being asked to consider a series of negative instruments, including the three to which Mr Don referred; corrective instruments are being laid before the Subordinate Legislation Committee this afternoon that cover certain elements of the instruments.

Our papers make it clear that the Subordinate Legislation Committee had certain issues with those three instruments. The Scottish Government accepted in correspondence that those issues were relevant and confirmed, in writing, that it will address them. I am confident that that will be duly considered this afternoon in the Subordinate Legislation Committee. In any event, we are being asked to consider the instruments as they stand, with the caveat that the Scottish Government will come forward with corrective measures for some elements of those instruments that are variously noteworthy.

In the circumstances, I understand that the committee can proceed with the instruments if it is minded to do so. Indeed, we will look at the amending instruments once the Subordinate Legislation Committee has considered them in September.

Nigel Don: Perhaps I can help Dennis Robertson by pointing out that, within the negative procedure, we often look at an instrument after it has come into force. That is what we will be doing in September, because the instruments that we are considering will come into force in July. As I understand it, it is important for the committee to allow the instruments to proceed today because if we do not, they will not be there to amend in September. We need the complete set of instruments, including those that have errors, in order for them to be corrected.

The Deputy Convener: That is a good point. On that basis, unless there are any further comments, is the committee agreed that it does not wish to make any recommendations on the instruments?

Members indicated agreement.

**Wildlife and Natural Environment
(Scotland) Act 2011 (Commencement No 4,
Savings and Transitional Provisions)
Order 2012 (SSI 2012/175)**

**Bluetongue (Scotland) Amendment Order
2012 (SSI 2012/184)**

The Deputy Convener: The next agenda item is consideration of two instruments that are not subject to any parliamentary procedure. I refer members to the agenda and the accompanying papers.

As there are no comments, I seek the committee's agreement to note the instruments. Is the committee so agreed?

Members indicated agreement.

The Deputy Convener: Thank you. I remind members that the committee's next meeting is on 12 September 2012.

Meeting closed at 10:51.

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