

ENTERPRISE AND CULTURE COMMITTEE

Tuesday 14 November 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE

27th Meeting 2006, Session 2

CONVENER

*Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)

*Richard Baker (North East Scotland) (Lab)

*Susan Deacon (Edinburgh East and Musselburgh) (Lab)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Karen Gillon (Clydesdale) (Lab)

*Mr Stewart Maxwell (West of Scotland) (SNP)

*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

COMMITTEE SUBSTITUTES

Mark Ballard (Lothians) (Green)

Donald Gorrie (Central Scotland) (LD)

Fiona Hyslop (Lothians) (SNP)

Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Allan Wilson (Deputy Minister for Enterprise and Lifelong Learning)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Nick Hawthorne

LOCATION

Committee Room 2

Scottish Parliament

Enterprise and Culture Committee

Tuesday 14 November 2006

[THE CONVENER *opened the meeting at 14:00*]

Item in Private

The Convener (Alex Neil): It is 2 o'clock, so I welcome everybody to the 27th meeting of the Enterprise and Culture Committee in 2006. I have received no apologies. I remind everybody, including the multitude in the gallery, to switch off their mobile phones.

Agenda item 1 is the proposal that we discuss item 4 in private. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 3) Order 2006 (draft)

14:01

The Convener: I welcome Allan Wilson, the Deputy Minister for Enterprise and Lifelong Learning, to move motion S2M-5038.

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): Thank you, convener. It is good to be back.

The draft order will enable us to propose important changes to the renewables obligation Scotland—ROS for short. The Electricity Act 1989 functions that the draft order will transfer will help small renewable generators to benefit from the financial rewards that are available under the renewables obligation Scotland.

In effect, householders with rooftop wind turbines or solar panels will be able to amalgamate their output, making it easier for them to qualify for renewable obligation certificates, which can then be sold to electricity suppliers, with the income going back to the generators. The draft order will also transfer functions that will enable such generators to appoint agents to act on their behalf, thereby greatly reducing the administrative burden that some small generators experience.

Subject to consultation and the agreement of the Scottish Parliament, the changes will be introduced in April 2007 via amendments to the renewables obligation Scotland.

The second function of the order relates to the healthy start scheme. The current welfare food scheme was first introduced in Britain to combat food shortages during the second world war. It offered milk and infant formula to low-income families. Following a Department of Health led review, section 13 of the Social Security Act 1988 was substituted by the Health and Social Care (Community Health and Standards) Act 2003 to enable the welfare food scheme to be replaced by the healthy start scheme.

The new scheme, which will be operational throughout the United Kingdom from 27 November 2006, offers vouchers to exchange for milk, fresh fruit and vegetables and for infant formula to pregnant women and children under the age of four in low-income families. The vouchers can be used in a wide range of participating shops and pharmacies. Under the welfare food scheme, tokens could be exchanged only for milk and infant formula—the new scheme will offer much more flexibility and choice.

Although, like the welfare food scheme, healthy start is based primarily on social security benefits and is therefore a reserved matter, the range of foods and matters that are relevant to the national health service link closely to devolved health policy. Therefore, the draft order will transfer to the Scottish ministers the functions of prescribing the description of foods to be made available under healthy start in Scotland in the future and of issuing directions to health boards that will administer parts of the scheme in Scotland.

The draft order also provides for the transfer to the Scottish ministers of payment and reimbursement functions in relation to the healthy start food vouchers and vitamins that are provided to beneficiaries in Scotland. The functions are similar to those that are currently carried out by the Scottish ministers in the welfare food scheme reimbursement.

Those are all appropriate functions to be exercised in Scotland by the Scottish ministers—I am sure that you will agree, convener—and I hope that the committee will approve the transfer of the functions to the Scottish ministers as set out in the draft order.

I move,

That the Enterprise and Culture Committee recommends that the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 3) Order 2006 (SI 2006/draft) be approved.

The Convener: I point out that the order is subject to the affirmative procedure, and that the Subordinate Legislation Committee raised no points about it.

Murdo Fraser (Mid Scotland and Fife) (Con): The draft order is welcome, especially the measures that it contains on renewable energy and encouraging the development of small and microgeneration schemes. The Executive note that is attached to the order talks about generators appointing agents to act on their behalf, which will allow the energy from different small-scale sources to be amalgamated—the minister mentioned that. Are there people who operate in that field who could undertake the role of agents or will a new stream of people have to be brought into play?

Allan Wilson: I do not know; we do not seem to know whether any such people yet exist in a formal sense. The securing of accreditation from the Office of Gas and Electricity Markets would be a simple matter of signing the appropriate form.

Basically, the measure is designed to smooth the administration of the scheme and to ensure that everyone can benefit from it. Someone whose output was less than 0.5MWh could get together with their neighbour to pool their outputs. Either of them could be appointed as an agent and could

apply to Ofgem for the ROCs, the proceeds from which could be distributed accordingly. It will be a relatively simple process.

The proposal could lead to the creation of agents who will have a much wider remit—I suppose that they could work for housing associations or other groups of people—but our aim is to ensure that everyone has the opportunity to benefit from the ROCs, regardless of where they live. Not everyone who has a rooftop turbine will necessarily generate 0.5MWh of energy, but if they combined their output with that of others, they would be eligible to apply for the accrued financial benefit of the ROCs. That will act as an incentive for the wider spread of microgeneration.

Christine May (Central Fife) (Lab): I, too, welcome the order. I have two questions, one of which relates to what you said in response to Murdo Fraser, which was that there are not many agents at the moment. Do you think that the order will give people who might wish to install renewable energy devices in their homes the confidence of knowing that in the future they will be able to sell their surplus to the grid? Is the measure confined to householders or could it benefit a community centre that put in a renewable heating system that produced excess energy that could be sold?

Allan Wilson: I regard the measure as an incentive. It could be an administrative burden for an individual householder to apply directly to Ofgem, so there is a market opportunity for people to move into the renewable obligation certificate agent business and to smooth the administrative process. Communities and individuals could benefit. The proposal is meant to help to stimulate growth in the microgeneration market—I am sure that it will. The process will be incentivised because microgenerators can accrue fairly substantial financial benefit by accessing the ROCs.

Christine May: I should have asked whether the measure will apply to small businesses as well as to community organisations.

Allan Wilson: It will.

Karen Gillon (Clydesdale) (Lab): My question is about the part of the order that deals with the healthy start initiative. I welcome what is being proposed. What evaluation of the scheme will the Executive conduct to examine the scheme's impact on breastfeeding, for example, now that breastfeeding mothers will be able to buy fresh fruit and will not be disadvantaged because they do not buy formula milk?

Allan Wilson: Part of the rationale for the proposal is to ensure that mothers who choose to breastfeed have access to the financial benefits that accrue to those who buy formula milk.

Mothers who do not use formula milk will be able to use their benefits entitlement to buy fresh fruit and vegetables, which is a good thing. We will assume powers to designate what the vouchers could be spent on. We will monitor closely the introduction of the scheme, which has been piloted in Devon and Cornwall. As Karen Gillon said, extension of it to Scotland is a good thing. In the future, ministers may choose to extend the range of products on which people can spend their benefits entitlement.

The object of the exercise is to reduce the number of people who are entitled to the vouchers, because it is a benefit for people on low incomes. We want to raise the standard of living of mothers and their families so that they are not reliant on benefits. We hope, over the years, to see the number of recipients of the vouchers reduce.

Shiona Baird (North East Scotland) (Green): I would like to clarify a point on the renewables obligation aspect of the draft order. My understanding, from what I read and from your comments, is that the draft order merely introduces flexibility. My point follows the one that Christine May and Murdo Fraser were getting at, which is that there is still plenty of opportunity for individuals, businesses or whoever to apply for ROCs. My understanding is that the draft order provides an enabling function for people to come together if they so desire, but it does not rule out their applying themselves.

Allan Wilson: No—it will depend on what they generate. Current provision is that generation of 0.5MWh is the basis for entitlement. Individual householders may not generate 0.5MWh, but if they combine with others they certainly could. Therefore, the financial benefit that will accrue from trading in the certificates could be spread around householders as well as small businesses and larger generators. That will incentivise microgeneration.

The Convener: I take it that the committee is minded to recommend that Parliament approve the draft order.

Members *indicated agreement.*

The Convener: That is agreed unanimously. We look forward to the day when the whole of schedule 5 to the Scotland Act 1998 gets transferred.

Allan Wilson: That day will be a long time coming.

The Convener: I thank the minister and his officials.

Scottish Register of Tartans Bill: Stage 1

14:11

The Convener: Item 3 is the Scottish Register of Tartans Bill. Members may remember that when previously we discussed the item we agreed to invite written evidence: there has been a flood of written evidence, which we must review. We must also decide whether to invite anyone to give oral evidence and, if so, whom.

I ask Stephen Imrie to provide us with an overview of the written evidence that has come in so far.

Stephen Imrie (Clerk): I am happy to do that. The written evidence that we have received so far has been circulated to members in the committee papers. Additional written submissions from a variety of bodies have been provided to members today as late submissions. All the information is now available on the committee's web page.

The clerks have analysed the written submissions that we have received so far and have put them into four categories: submissions that are broadly supportive of the general principles of the bill; those that are broadly unsupportive; those that are unsupportive of certain aspects of the bill but generally in favour of the general principles; and one in which the person who made the submission commented only on the creation of a keeper.

We have given the committee a broad steer on the different camps that the written submissions come into. The information is all set out in the paper.

The Convener: It is fair to say that only two respondents were against the general principles of the bill. All the other respondents either support the general principles or support the general principles but with reservations about some of the detail.

Stephen Imrie: One final point is that I have discussed the bill with a number of civil servants in the Scottish Executive. I understand that there have been deliberations with a number of ministers and that an Executive memorandum that sets out the Executive's position on the bill is being drafted and should be available to the committee shortly. I have no further news on whether the Executive is broadly in favour of the general principles of the bill, whether it is against them or whether it is neutral.

The Convener: There is a considerable volume of evidence and some of the responses have come to the committee only in the past day or so.

Perhaps members have initial thoughts on the submissions that we have received so far.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): My thoughts are as follows. Given the Lord Lyon King of Arms's submission, and submissions that said that the keeper ought to be within the office of the Court of the Lord Lyon, it might be wise—although I am open to other members' suggestions—to ask the Lord Lyon for evidence. There is a history of people inquiring of the Lord Lyon about tartans and being surprised to be told that there is no formal record or register of tartans.

I support the bill. I would not have signed it if I did not, but there is a difficulty about where we draw the line between a tartan—for example, a tartan for a given surname—and something that looks like a tartan, with stripes of different colours at right angles to each other, but which the designer chooses to call, say, a pattern. There is a grey area that could cause difficulties. I seek guidance on whether there is somebody out there who can define tartan more accurately. I have looked into the matter carefully, but as I understand it, no definition of tartan would exclude something that looked damned like a tartan but was called a pattern by its designer so that they did not have to register it. That is the problem.

14:15

The Convener: On your first point, it strikes me that if the bill is deemed to be appropriate, the proposed register should be kept by the Lord Lyon, who does many other such jobs anyway. That would avoid the need to create a new position of keeper of the register of tartans.

Karen Gillon: My initial reservation about the bill is the cost of creating a new position for no good purpose. I would certainly want to hear evidence from the Scottish Tartans Authority because I was struck by the number of respondents who mentioned it.

I suggest that we take evidence from two panels—a panel of witnesses who support the bill and a panel of those who oppose it or have concerns about it. We do not need to take oral evidence from everyone who provided written evidence. The general themes of the bill could be considered with two panels. However, we need to decide whether it is necessary to create a new post and whether to do so would represent good use of public money, given that a number of private organisations already fulfil the vast majority of the proposed functions.

The Convener: We will probably need guidance on the matter, but I suspect that the Lord Lyon is a reserved matter and that we do not have the power to tell him what to do. I would have thought

that the Lord Lyon was part of the Queen's wider court, but we need to check that.

Murdo Fraser: The bill is an interesting proposal. My colleague Jamie McGrigor is trying to remove some confusion. Rather than a single tartan index, we have two tartan indexes that are, in effect, in competition. There is precedent, legally and historically, in that intellectual property rights are controlled by the Government. If someone wants to register a patent or a licence, they do that through a Government-controlled agency and they get protection against all comers through the courts.

I agree with Karen Gillon that there is scope for taking evidence from two panels. For the panel of people who are generally sympathetic, I suggest that we take evidence from the Lord Lyon, if he is willing to come; from the standing council of Scottish chiefs, for the legalistic point of view; from a body that represents tourism, such as perhaps the Scottish Tourism Forum rather than VisitScotland; and from a company in the textile industry, such as Macnaughton Holdings Ltd, which has experience of what happens at the coal face in dealing with tartans.

The panel of those who oppose the bill could include Scotweb Marketing Ltd and others who are sceptical about various aspects. If we get a spread of different opinions on the principles of the bill and the detailed provisions on the proposed register, that will give us some meat that we can get our teeth stuck into in deciding whether we want to take the proposal any further.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): If this were a motion in a members' business debate, there would be an interesting discussion to be had. However, I do not think that this is an appropriate subject for Parliament to legislate on, and I have seen no evidence that we should. The way Parliament spends its time and the public's money is an ever more important issue. I quote my colleague Murdo Fraser, who recently told us that

"we should all sign up to the principle that we should seek to legislate only where doing so is absolutely necessary, and thereby set our faces against unnecessary legislation."—[*Official Report, Enterprise and Culture Committee*, 26 September 2006; c 3303.]

I sign up to that principle.

There have been discussions in and around Parliament about how, for example, we should not create any more tsars, and about how we should be careful in our use of our time and energies. I see no basis for taking the bill further. I suspect that the committee will end up holding meetings to explore the issues even more fully, but those sessions will come at a cost. As well as the direct cost of serving the democratic process, there is the cost in the time and energy of politicians.

I respect the right of any member to raise issues and to try to muster support, but I do not think that this particular issue should use the legislative vehicle. We are in the latter stages of the parliamentary session and there is great pressure on the legislative timetable. Members, committees and Parliament would do better to concentrate on the really important bills that we seek to put on the statute book before the session ends.

Mr Stewart Maxwell (West of Scotland) (SNP):

I agree with much of what has been said. Most of us probably think that it would be a good idea to have an official register; it sounds like the kind of thing that we should have had long before now, so it came as a surprise to me to find out that we do not have one.

However, I would question the purpose of the register if it were set up under the terms of the bill. It would not offer protection and would not do many of the things that one would assume a register would do. I therefore remain to be convinced of the point of the register. We should not have a register just for the sake of it. Rather than seek to have a positive effect on the tartan industry, the bill simply seems to say, "This seems like a good idea so we should do it." The bill does not seem to offer the industry protection from people who would want to use the various patterns that, as Jamie Stone said, are not necessarily tartans. There does not seem to be any protection for tartans, as such.

I agree with Susan Deacon about costs and priorities, and I agree with Karen Gillon. I cannot see any real justification for a department, a committee or a keeper to be set up in addition to what already exists. I certainly agree with the extremely important point that was made about unnecessary legislation—I am not sure that it is necessary to legislate on this subject.

Having read some of the written evidence to the committee, I do not understand why an alternative approach has not been suggested. Registers already exist, so why could not there be an agreement to bring the warring parties together to create a single register, making use of work that has been done over many decades. I wondered why we had ended up with a bill instead. If we are going to look further into the matter, we should certainly look into what seems to be an obvious alternative—one that would not cost us any money and would not take up any legislative time.

Richard Baker (North East Scotland) (Lab): I sympathise with Stewart Maxwell. The idea behind the bill is good and I, too, am surprised that a register does not exist, but vehicles other than legislation seem to be available. We seem sometimes to legislate first and think later. We should look into some of the ideas that Stewart just mentioned. That would make our taking evidence worthwhile.

Let us not be too hard on Jamie McGrigor; it is a good idea to focus minds on the issue, because benefits may flow from it. The committee may well deem a new law to be unnecessary, but in exploring the issue we may discover other ways of dealing with the matter.

Shiona Baird: There was a telling point in the submission from Macnaughton Holdings, which concluded:

"No new register can succeed in its purpose as a depository or archive, or to provide information on tartan, if it does not have access to the most informative and complete archives currently available. The new register must therefore have the support of the existing registers before it can fulfil its self proclaimed role."

The proposed new register patently would not have such support, as the Scottish Tartans Authority's submission makes clear.

I respectfully suggest that the member rethink his approach. There is a general feeling that it would be good to have an official register, but it might be appropriate to support the Scottish Tartans Authority, which is a not-for-profit body and not a private company, to enable it to keep an official register. Such an approach would enable us to have an official register that would make use of all the STA's work over the years. That would be a simpler solution than parliamentary consideration of a bill.

Christine May: I pay tribute to members for their sensible remarks. There have been no knee-jerk or emotional reactions to the bill. Should there be a register? Yes, if possible. However, as members have said, the issue is more complex than it seems and two bodies exist that could keep the register, but which cannot agree. There would be merit in ascertaining whether agreement is possible.

Much has been made of the historic basis for tartan, but we must accept that the historic basis for tartan as we know it and as it is marketed is fairly recent. The wool plaid that was used in Scotland and Ireland in times of yore was not what we currently know as tartan.

However, tartan is important to the tourism and textile industries. We could regard the bill as a proposal to spend about £100,000 to support those industries. Would that be a good use of the money? It would be interesting to hear whether the people who are most closely involved in the industries would like £100,000 to be spent in that way. My view is that it would not be a good use of the money. We must consider whether legislation is the necessary or only way of achieving the bill's objectives. The parliamentary timetable is busy with stuff that makes a difference to thousands of lives. Textiles and tourism are important, but the bill would not lead to life-changing legislation.

We should ascertain whether we can secure agreement between the parties. It would be good to invite them to talk to the committee.

Mr Stone: I represent a Highland constituency and I support what Christine May said about the history of tartan. It has been said that an awful lot of tartan was largely the invention of Sir Walter Scott and the monarch of the time, who famously visited Edinburgh—as the historians among us know—and wore a kilt, albeit with flesh-coloured tights underneath it. If we go further back in history, there is not a huge amount of evidence. The Black Watch tartan is as it is because the regiment wore dark tartans, but beyond that we do not know much. Murdo Fraser will know that it has been suggested that a former Lord Lovat more or less invented the Fraser tartan. That is a telling point.

In contrast, the Lord Lyon's records of who is chief of which clan, who is descended from whom and who is entitled to which coat of arms or crest has been carefully recorded since the 11th century.

The Convener: We should bear in mind that we have not taken evidence from the Scottish Executive. However, the majority view of the committee—if not the consensus—is that there is a big question about whether legislation is needed to establish a register. The committee's view is that we should invite Jamie McGrigor to explore non-legislative ways of achieving his objective, which we agree is reasonably desirable and would help tourism, albeit on the periphery, rather than take the legislative route.

I suggest that we ask the clerks to draw up a report for Parliament along those lines. We can consider the draft report when we consider the evidence from the Scottish Executive, at our next meeting or the one after it. Do members agree with that suggestion?

Members indicated agreement.

The Convener: We will move into private session, so we need to clear the gallery.

14:30

Meeting continued in private until 14:57.

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