

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 17 December 2003
(Morning)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

16th Meeting 2003, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

Roseanna Cunningham (Perth) (SNP)

*Rob Gibson (Highlands and Islands) (SNP)

*Karen Gillon (Clydesdale) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mr Alasdair Morrison (Western Isles) (Lab)

*Nora Radcliffe (Gordon) (LD)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)

Janis Hughes (Glasgow Rutherglen) (Lab)

Jim Mather (Highlands and Islands) (SNP)

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Malcolm McMillan (Scottish Executive Legal and Parliamentary Services)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone

Roz Wheeler

LOCATION

Committee Room 3

Scottish Parliament

Environment and Rural Development Committee

Wednesday 17 December 2003

(Morning)

[THE CONVENER opened the meeting at 11:33]

Subordinate Legislation

The Convener (Sarah Boyack): I welcome committee members, witnesses and members of the press and public to the meeting.

We have two items on the agenda this morning, the first of which is subordinate legislation. We have three instruments, on totally different issues, to consider under the negative procedure. We expressed concerns about two of them at our previous meeting, so I shall take them one at a time.

Pig Carcase (Grading) Amendment (Scotland) Regulations 2003 (SSI 2003/565)

The Convener: Members asked for further information on the consultation process with the industry to ensure that its views on the potential impact of the Pig Carcase (Grading) Amendment (Scotland) Regulations 2003 had been properly considered. We have received a memorandum from the Scottish Executive. Is everyone happy with the content of the memorandum?

Members indicated agreement.

The Convener: In that case, are members content with the regulations and happy to make no recommendation to the Parliament?

Members indicated agreement.

Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003 (SSI 2003/560)

The Convener: We requested clarification from the Executive on the definition in the Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003 of "Scotland" and its relationship with territorial waters. We also requested further clarification from the Subordinate Legislation Committee of its recommendations on the order. An extract has been circulated of the Subordinate Legislation Committee's 14th report, containing the recommendations, along with the memorandum

from the committee's legal adviser and the memorandum from the Scottish Executive. Do members have comments or questions?

Rob Gibson (Highlands and Islands) (SNP): I do not want to make a large issue of this, because it is fairly clear from the advice that we have had how the order will be interpreted—any matter reaching the courts would be marginal. However, because the definition of "Scotland" has to be the definition in the Scotland Act 1998 as read with the Scottish Adjacent Waters Boundaries Order 1999, I wonder whether we might alert the Executive to the possibility of amending the primary legislation to take the new definition into account.

The Convener: Having read the briefing from the Subordinate Legislation Committee, I think that there are two ways in which to deal with the order. One is for the Executive not to include article 2 in the order; the other is for somebody to provide a judicial interpretation of the definition. I do not think that there is a problem with the order in the context of the issue that we are discussing. However, as we have the Executive officials here, it might be worth asking them for a view. Why is article 2 in the order?

Malcolm McMillan (Scottish Executive Legal and Parliamentary Services): Article 2 was included in the order to clarify its scope. We are always mindful of the need to clarify the scope of an offence where provision is made in a Scottish statutory instrument. That is one of the issues that the Subordinate Legislation Committee raised with us. Given that there is no precise definition of the boundary judicially or in acts of the United Kingdom Parliament, we included article 2 to give the precise definition, so that a person releasing fish into the wild would know precisely the scope of the offence.

The Convener: The advice that we have taken is that the issue of the boundary is not clear. Is that a correct interpretation?

Malcolm McMillan: The Executive's position is that the boundary as set in article 2 is the same as the boundary that would have been set pre-devolution. Our position is that the meaning of "Scotland" pre-devolution was the land and internal waters of Scotland and the territorial sea adjacent to Scotland. The same definition has been adopted in the order, following the Scottish Adjacent Waters Boundaries Order 1999 and the definition in the Scotland Act 1998.

The Convener: I remember us getting into this issue previously—

Mr Alasdair Morrison (Western Isles) (Lab): Agreed.

The Convener: At length in the Parliament.

Perhaps we should deal with the issue by agreeing to make no recommendation to the Parliament on the order and by informing the Executive that we have received advice that there is a question about interpretation.

Mr Morrison: I was just listening to Mr McMillan's explanation. I must be missing something, because I thought that it was straightforward. I understand what he means and have no difficulty or delicacy with the explanation. We should just move on as quickly as we can to the next item.

The Convener: We have had different interpretations of what the issue means.

Mr Morrison: That is the point that I am trying to make. We have just had a clear and straightforward explanation and I do not think that we should waste any more of the committee's time or of the officials' time.

The Convener: I see members nodding. Do you want to dissent from what has been said, Rob, or are you happy to move on? The fact that we have interrogated the matter will be reflected in the *Official Report*.

Rob Gibson: As I said, I am happy with what is in the statutory instrument. At the same time, I wish that the instrument had been brought to us in a clearer form. I have had my say.

The Convener: You have logged your point.

Do we agree to make no recommendation to the Parliament?

Members indicated agreement.

Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003 (SSI 2003/576)

The Convener: The Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003 seem a bit more complex. Everyone will have received all the additional papers. Are there any comments?

Alex Johnstone (North East Scotland) (Con): I do not want to go first, because I missed the pre-meeting briefing.

The Convener: I have read all the paperwork and I feel that the advice from the Subordinate Legislation Committee is different from what we usually get, in that that committee has made quite a lot of detailed comments about how the instrument will be implemented. Strong comments have been made about whether there are effective sanctions and clear obligations and about whether the penalties have been set correctly. Having read all the paperwork, I question whether we can

recommend that the regulations be passed in their current form, especially given the strong guidance that we have had from the Subordinate Legislation Committee about their defectiveness in certain respects.

We have a number of options. First, we can ask Executive officials to respond to some of our points. Do members have further queries?

Nora Radcliffe (Gordon) (LD): I do not have a query. There is a de facto system in place, so there are no worries about that. The English legislation is coming into effect late and the Scottish legislation will be late. I do not see what is wrong with the Scottish legislation being later, as long as it is right, given that we are not going to be out of step with England and Wales. I do not think that we will lose anything by lodging a motion to annul the instrument. The point is to get the legislation right; if we do, we will gain quite a lot.

Karen Gillon (Clydesdale) (Lab): We would be negligent if we allowed the instrument to be passed. I do not think that we have any option. We might have to lodge a motion of annulment, but we should give the minister the opportunity to respond to the Subordinate Legislation Committee's concerns by early January, with a view to having a meeting, if necessary, on 7 January. We have to send a clear message to the Executive that we are not messing about and that, if we do not get a satisfactory response, we will lodge a motion to annul.

Maureen Macmillan (Highlands and Islands) (Lab): I agree with Karen Gillon. There is a distinct lack of clarity about what the sanctions are if the regulations—if one can work them out—are broken. We cannot allow the instrument to be passed. That would be a dereliction of duty. We ought to seek an annulment unless the Executive comes up with a greatly improved version.

Alex Johnstone: I think that I will be the final member to speak on the regulations, which is probably the best place for an afterthought.

Over and above the concerns that have been expressed about the regulations, I am concerned more generally about recent statutory instruments on agricultural and environmental issues. There is an issue surrounding comparisons with similar legislation south of the border. I would be the first to defend the right of the Scottish Executive and Scottish Parliament to take their own view on how legislation should be interpreted and implemented. However, where there are radical differences in the way in which legislation is implemented, we should examine market considerations.

We talk about the European single market when we should perhaps talk more about the United Kingdom single market. When an industry such as the keeping of laying hens is regulated differently

in Scotland from the way in which it is on the other side of the border, we have to be concerned about competition. In that respect, and in respect of certain other instruments that might appear in the near future, we have to begin to consider how the varying implementation of legislation will affect and introduce differences into the single marketplace within which certain industries have to operate.

The Convener: It would be useful to have the point clarified about the extent to which there is a difference.

Alex Johnstone: Yes.

The Convener: I have questions about the instrument, as do other members. I suggest that we write to the minister and make those points. We should ask him to consider withdrawing the instrument or to amend it at the earliest opportunity, although I do not know whether we would be happy with that.

In any case, we should ask for a response from the Executive by 5 January. That would enable us to consider the minister's response and the points of clarification that Alex Johnstone has asked for and still have a committee meeting during that week, at which we could come back to the instrument and lodge a motion to annul if that was appropriate.

It is not good practice to let things through when we have had such strong recommendations from the Subordinate Legislation Committee. We should give the minister a chance to consider the matter and to come back to the committee. Is that agreed?

Members indicated agreement.

The Convener: That allows us to consider the instrument again in the new year. We can keep in touch on whether we need to have a meeting.

National Waste Plan (Parliamentary Debate)

11:46

The Convener: Our final agenda item is on our national waste plan report. It is proposed that I make a bid to the Conveners Group and the Parliamentary Bureau to secure a debate in the Parliament on our report. Is that agreed?

Members indicated agreement.

The Convener: I now close the final meeting of 2003 and look forward to seeing you all in 2004.

Meeting closed at 11:47.

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