

# **ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

Thursday 8 January 2004  
*(Afternoon)*

Session 2

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## ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

### 1<sup>st</sup> Meeting 2004, 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

#### 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

Thursday 8 January 2004

(Afternoon)

[THE CONVENER opened the meeting at 12:46]

### Subordinate Legislation

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

**The Convener (Sarah Boyack):** I welcome committee members, witnesses, press and members of the public. We have received no apologies. I remind everyone to turn off their mobile phones.

The substantive item on our agenda today is subordinate legislation. We must consider the Registration of Establishments Keeping Laying Hens (Scotland) Regulations 2003 under the negative procedure. Members will recall that we agreed to defer further consideration of the regulations until today's meeting, pending clarification from the Executive on a number of points that members raised. The Subordinate Legislation Committee expressed several serious concerns about the drafting of the regulations and passed on its recommendations to us; an extract from the Subordinate Legislation Committee's 15<sup>th</sup> report in 2003 has been circulated to all members.

At our last meeting, we agreed that we would write to the Minister for Environment and Rural Development to raise our concerns about the drafting of the regulations and to seek an urgent response from him. We have received a response and I have circulated to members a copy of the letter that I sent to the minister and of his response. Members will note that the minister responds directly to the issues that we raised and to the comments of the Subordinate Legislation Committee. This morning, we have received an additional note by the Parliament's legal advisers.

Do members have any comments?

**Maureen Macmillan (Highlands and Islands) (Lab):** I do not have a copy of the last document that you mentioned.

**Rob Gibson (Highlands and Islands) (SNP):** I do not have a copy of the minister's letter.

**The Convener:** That was circulated to everyone by e-mail on Monday.

The minister's response is quite lengthy. As well as raising matters of detail, we asked whether the regulations did what they said that they would do and we sought clarification on quite a few points. I think that the minister has attempted to respond to those issues directly. The other significant aspect is the minister's commitment to lay a set of amending regulations within this calendar month. In the scheme of things, that is a firm commitment to a pretty swift response and, if we can hold the minister to that, I believe that that will be satisfactory. However, I seek members' views on the matter.

**Eleanor Scott (Highlands and Islands) (Green):** I am content with the minister's response. I hope that words have been said to the people who draft such statutory instruments so that drafting problems will be avoided in future. It is clear that there was a problem with the laying hens regulations and that what we have received from the minister is as good as it gets.

I am interested in the note from the Parliament's directorate of legal services, which makes it sound as if there is a fundamental problem in relation to the Parliament's power to annul instruments. Is there any way in which that issue could be examined and the procedure improved? Whose job would that be?

**The Convener:** I think that it would be the Subordinate Legislation Committee's concern rather than ours; our job is to consider the policy content of regulations and to ensure that they meet their stated intention. Many of the concerns about the laying hens regulations were to do with whether they were satisfactorily drafted and it was the Subordinate Legislation Committee that brought those issues to our attention. Therefore, I think that the issue that you raise is probably a matter for that committee.

**Alex Johnstone (North East Scotland) (Con):** The issue is that the regulations were mince, to use a colloquialism. However, although there are difficulties with the regulations, there is a clearly defined need to proceed with them in some way. Given the commitments that the minister has made, it should be acceptable for the committee to allow the regulations to go through, if we are going to be able to make the relevant changes within a very short time scale.

On the overall procedure, I will restate a typical Conservative view. I am content with the procedure that we use, as long as we can force the minister to act. The function of our having the opportunity to annul statutory instruments is to force the minister to rethink and that has happened in this case. In the Parliament's first

session, members had experience of forcing ministers to withdraw instruments and to produce alternative instruments, where that was appropriate. It is having the opportunity to threaten to annul that has that effect. The fact that the controls on the submission of statutory instruments and their movement into law have been in place so long are an indication that that method is successful. For the most part, that ultimate sanction is appropriate and adequate for the instruments that we consider under the negative procedure, and it probably does not need examining.

**Nora Radcliffe (Gordon) (LD):** Most of the difficulties with the laying hens regulations were to do with timing. The regulations were to come into force on 31 December, which meant that we did not have time to annul them and to have new regulations produced before it was necessary to have something in place. Failure to adhere to a sensible timetable created much of the difficulty.

**Roseanna Cunningham (Perth) (SNP):** That point has perhaps to be raised. The Subordinate Legislation Committee raised some of the technical stuff; even so, by the time that we considered the instrument, we were right up against the deadline. We need to reconsider how we handle the issue of time in respect of statutory instruments. We have tended to consider them in groups in order not to have them scattered throughout our agendas. I am not sure when this instrument was received—it may have been a late one anyway. We need to keep an eye on this matter. We should have sufficient time so that, if we come across difficulties such as this, we do not run out of time to deal with them.

**Alex Johnstone:** We should consider the significance of the instrument and the year-end date on which it first came before us. It is a problem that will recur, and we should consider it carefully. Perhaps the Executive is at fault, or the problem may lie with the Parliament and with committee procedures. However, the problem will recur, and it is worth observing.

**The Convener:** The key issue is that we are probably now satisfied with this instrument. We have no intention of annulling it today. We have a satisfactory commitment from the minister that he will introduce changes, which we will have the chance to scrutinise when they come before the committee.

I have just spoken to the clerks about the Parliament's review of subordinate legislation procedures, which is expected to happen in this session. This committee is one of those that have the heaviest weight of subordinate legislation, and we have quite a lot of experience that we would want to feed in to that review. It is important that we pass into the system the experiences that we have had over time.

We have discussed the broader issues about procedure and focused on the job of considering this set of regulations. Are members therefore content with the instrument and happy to make no formal recommendation to the Parliament?

**Nora Radcliffe:** Could you rephrase that slightly, and ask whether we are content to let this particular instrument go through? Or do we have to use that form of words?

**The Convener:** It is the prescribed form of words. To be clear, we are taking a decision on the basis that the minister will bring back amended regulations, which we will scrutinise. The minister's offer to do that in January has been expressed in writing. We are not making a formal recommendation to Parliament on the instrument, because we are not moving a motion to annul it.

**Rob Gibson:** Can that be added to the sentence?

**Nora Radcliffe:** It is on the record now.

**Roseanna Cunningham:** We have been satisfied in our concerns.

**The Convener:** Anyone reading the *Official Report* of this meeting will be clear about the views and the strength of feeling of the committee.

Are members happy with that?

**Members indicated agreement.**

**The Convener:** I have another couple of issues to deal with. At the next meeting, on 14 January, the committee will have in front of it an affirmative instrument on solvent emissions and will take evidence from the Minister for Environment and Rural Development on various other European issues.

Members will recall yesterday's debate on stage 1 of the Nature Conservation (Scotland) Bill. The general principles have been agreed to, so amendments for stage 2 can now be lodged with the clerks. We intend to start stage 2 consideration on 28 January. The target will be to go no further than the end of section 12 of the bill on that day. The deadline for lodging amendments to be considered on 28 January will be 2 pm on Monday 26 January.

**Roseanna Cunningham:** Has the committee had any response in respect of the various issues that we had asked the minister to deal with before the start of stage 2?

**The Convener:** Not beyond the verbal commitments that the minister made yesterday. We expect a response shortly. I will read the *Official Report* to double-check that. We asked for a number of points to be clarified before stage 2. We are particularly interested in issues relating to the first evidence session at stage 1.

**Roseanna Cunningham:** The issue that will come up straight away will be the definition of biodiversity.

**Rob Gibson:** The 20 questions.

**The Convener:** Yes. I just wanted to make members aware of the ground rules and the deadlines.

*Meeting closed at 12:56.*





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