



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 11 December 2013



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**RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**  
**37<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

\*Graeme Dey (Angus South) (SNP)

**COMMITTEE MEMBERS**

\*Claudia Beamish (South Scotland) (Lab)

\*Nigel Don (Angus North and Mearns) (SNP)

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

\*Cara Hilton (Dunfermline) (Lab)

\*Jim Hume (South Scotland) (LD)

\*Richard Lyle (Central Scotland) (SNP)

\*Angus MacDonald (Falkirk East) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Bill Hepburn (Scottish Government)

Helen Jones (Scottish Government)

Paul Wheelhouse (Minister for Environment and Climate Change)

**CLERK TO THE COMMITTEE**

Lynn Tullis

**LOCATION**

Committee Room 3



## Scottish Parliament

### Rural Affairs, Climate Change and Environment Committee

*Wednesday 11 December 2013*

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

### Subordinate Legislation

**Water Environment (River Basin  
Management Planning: Further Provision)  
(Scotland) Regulations 2013 (SSI 2013/323)**

**Water Environment (Shellfish Water  
Protected Areas: Designation) (Scotland)  
Order 2013 (SSI 2013/324)**

**Water Environment (Shellfish Water  
Protected Areas: Environmental  
Objectives etc) (Scotland) Regulations  
2013 (SSI 2013/325)**

**Seed (Scotland) (Miscellaneous  
Amendments) Regulations 2013 (SSI  
2013/326)**

**The Convener (Rob Gibson):** Welcome to the Rural Affairs, Climate Change and Environment Committee's 37th meeting in 2013. Members and the public should turn off mobile phones and so on, as they interfere with the sound system.

The first item of business is consideration of four negative instruments: the Water Environment (River Basin Management Planning: Further Provision) (Scotland) Regulations 2013; the Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2013; the Water Environment (Shellfish Water Protected Areas: Environmental Objectives etc) (Scotland) Regulations 2013; and the Seed (Scotland) (Miscellaneous Amendment) Regulations 2013.

No motion to annul has been received in relation to the instruments. I refer members to the paper. If there are no comments, are we agreed not to make any recommendations in relation to the instruments?

**Members** *indicated agreement.*

### Land Reform (Scotland) Act 2003 (Modification) Order 2013 [Draft]

### Land Reform (Scotland) Act 2003 (Modification) Order 2013—Statutory Guidance (SG 2013/254)

**The Convener:** Under agenda item 2, we will take evidence from the Minister for Environment and Climate Change on the draft Land Reform (Scotland) Act 2003 (Modification) Order 2013 and statutory guidance.

The order has been laid under the affirmative procedure, which means that the Parliament must approve it before its provisions may come into force. Following this evidence-taking session, the committee will be invited to consider the motion to recommend approval of the instrument under agenda item 3 and will consider the guidance separately under agenda item 4.

We welcome the minister, Paul Wheelhouse, and his team: Helen Jones, head of team in the natural resources division; Bill Hepburn, head of branch in the animal health and welfare division; Rona Carson, a solicitor in the natural resources division; and Barry McCaffrey, a solicitor in the animal health and welfare division.

I invite the minister to speak to the draft order and the guidance before we ask him any questions.

**The Minister for Environment and Climate Change (Paul Wheelhouse):** Thank you, convener, and good morning, everyone.

The draft order makes a small modification to the legislation that established statutory access rights to most land and inland water. The access rights that are set out in part 1 of the Land Reform (Scotland) Act 2003 are important and I make it clear at the outset that we do not seek to undermine them.

The legislation already provides for the temporary exemption of land from access rights—that is, for land closure—if there are good reasons. The order means that, when land is temporarily closed under a legislative process, core paths will be included too. I will say more about core paths later.

The 2003 act places emphasis on the local management of access. That is why the draft order is accompanied by statutory guidance on what it means for access authorities—that is, local authorities and national park authorities. There has been public consultation on the draft order and the guidance. The national access forum, which includes a broad spectrum of opinion, has been involved too.

I will outline the two circumstances in which core paths may be closed by the modification. Core paths are networks of paths required under the 2003 act. They are for non-motorised activities such as walking, cycling and horse riding and are used for recreation and everyday travel. Thirty one access authorities have now adopted their core path plans, giving 19,000km of core paths in Scotland.

The first circumstance in which a core path may be closed is where there is a section 11 order to close land. Organisers of outdoor concerts, car rallies or sporting events sometimes seek such an order to ensure safety and security or for admission purposes. However, the guidance for access authorities stresses that section 11 land closure orders should be used sparingly and for the minimum area and time needed. If a core path in the area is to be closed too, it is good practice to suggest an alternative route if feasible.

Section 11 orders for temporary land closure average 47 a year. However, usually only one or two are for six days or more. Those are subject to public consultation and ministerial confirmation. The modification will provide clarity for event organisers. That will be particularly important for two keynote events in homecoming 2014: the Commonwealth games and the Ryder cup. In both those cases, temporary land closures will also involve core paths.

The second instance in which the modification would take effect is during an outbreak of a notifiable animal disease. When that happens, public access to land can be prohibited or restricted under statutory powers to deal with the outbreak. For example, existing powers allow for land closure around premises that are affected by an outbreak of foot-and-mouth disease. At the moment, even if the land is closed, the core path cannot be closed, and that may undermine efforts to contain the outbreak. The draft order simply provides for the closure of core paths when land is being closed to control disease.

I look forward to answering members' questions.

**Jim Hume (South Scotland) (LD):** Good morning again, Paul—we have seen quite a lot of each other at various events in the past two or three days.

Unfortunately—or fortunately in some respects—I have had some experience of foot-and-mouth and of what can happen regarding access. I presided over Lothian and Borders National Farmers Union during the foot-and-mouth years, and I remember it well. Part of the problem back then was that responsibilities for animal health were delegated, but not the budget. That has been fixed, and the budget is now delegated, as well as the health responsibilities. According to

Richard Lochhead and the recent budget figures, no money has been put aside for fighting any outbreaks—God forbid—of animal diseases such as foot-and-mouth. What are your views on that?

**Paul Wheelhouse:** That is not an issue that would be resolved by the draft order, and it is a matter for the cabinet secretary to address. We take animal health issues extremely seriously, and Jim Hume knows the importance of the issue, given the devastation that the foot-and-mouth outbreak caused not only in Scotland but in the north of England. We have demonstrated the Government's commitment in the past on foot-and-mouth disease outbreaks by being prepared to step in and support farmers when, unfortunately, the United Kingdom Government was not willing to do so. We have put our money where our mouth is in the past.

We can write back to the committee about the position on funding for animal health, if that would be helpful to Mr Hume and colleagues.

**Jim Hume** *indicated agreement.*

**Alex Fergusson (Galloway and West Dumfries) (Con):** My question is on responsibility, too, but not financial responsibility. This might be clear in the notes but, if the powers were to be used, whose responsibility is it to ensure that the potential access taker is notified of the temporary closures?

**Paul Wheelhouse:** I will check this with colleagues—if they want to chip in—but my understanding is that the local access authority has responsibility to ensure that measures are implemented. Obviously, there are situations in which, if somebody is looking for a closure for more than six days, ministers will be consulted on whether we think that that is appropriate. That is an important safeguard for protecting public access provision. The local access authority—the local authority or the national park—has responsibility for the implementation of the measures and for ensuring that they are properly monitored and policed.

**Alex Fergusson:** I thought that that was the case, but it is good to have it on the record. Thank you.

**Graeme Dey (Angus South) (SNP):** Good morning, minister. You have partly answered my question in your response to Alex Fergusson, but I want to get further clarification. When we talk about the Commonwealth games, I assume that the measures will pertain to my constituency, too, with reference to the shooting range at Barry Buddon.

If the closure of a core path lasts for more than six days and the matter comes back to you, as minister, how will you strike the appropriate

balance between the need to close a path for the duration of an event and the wish not to encroach too much on people's rights to have access at either end of the period?

**Paul Wheelhouse:** That is an important point and I must stress that we do not have a definitive list of which core paths are affected by the Commonwealth games; we rely on the local authority to come to us if it feels that it is necessary to take advantage of the provisions in the order to ensure that a path is closed for a particular venue, whether that is Barry Buddon or another site.

I am not in a position to share a definitive list with the committee, but when any proposal comes before ministers we have to take seriously the implications of closure, ensuring that responsible access to the countryside and to other sites is protected as best it can be. However, there would be practical considerations if that were to happen in Barry Buddon, because of the need to control admission numbers and to ensure the health and safety of people in the area at the time when the event is going on. That is a practical example of why we need to consider public access issues and decide what is appropriate at that time.

I can assure the committee that if any proposal comes before me, I will take a balanced view on the need to ensure public access to land under the Land Reform (Scotland) Act 2003 and the strong sentiment across Scotland about ensuring the right to responsible access, while at the same time protecting the public interest and public safety and ensuring the security of the events themselves. It is a balancing act, but we will take all those matters into account.

**Claudia Beamish (South Scotland) (Lab):** My question also relates to the right to responsible access, and I have gained reassurance from the minister's answer to Graeme Dey. On the long-term section 11 orders, I see that there is a clear path of consultation, but would there ever be an occasion on which such an order would be open ended and, if so, would there be an appropriate review mechanism?

**Paul Wheelhouse:** I shall defer to colleagues to say whether there has been any consultation or discussion on the subject of open-ended orders. If we were looking at a situation in which a closure would be required for more than six days, a case would clearly have to be made for that. Even in the context of an animal disease outbreak such as foot-and-mouth disease, six days is effectively the minimum period, and we would have to monitor the seriousness of the outbreak.

I shall ask Bill Hepburn or Barry McCaffrey to comment specifically on animal health, where I can see there being a more open-ended situation

if there was a serious outbreak. However, for a particular event, I think that it would be possible to define the length of time that would be required. In fact, I would look unfavourably on a proposal that a closure be open ended for a public event such as a car show. I would have to ask why, and any application that came before ministers asking for a closure lasting more than six days would raise questions about why there was not a defined period. That is more likely to be the case in an animal health situation.

**Bill Hepburn (Scottish Government):** In the case of animal diseases, the length of closure will depend on the circumstances of the outbreak and on whether the disease has spread. When a disease is found and the department moves in, there is a veterinary assessment of all the risks, action is taken to eradicate the disease and then there is a further veterinary assessment. When that is clear, ministers are advised that the closures can be lifted. Our objective would be to lift any restrictions, including restrictions on access, as quickly as possible, particularly if there were a number of outbreaks, because we would want to move on to the next one as soon as we could.

**The Convener:** I would like to ask about a related issue. The order refers to core paths, but what about rights of way?

**Paul Wheelhouse:** That is a good point. I shall ask Helen Jones to explain the distinction.

**Helen Jones (Scottish Government):** Rights of way are not covered by the order, because the Land Reform (Scotland) Act 2003 allows us to amend only sections 6 and 7 of the act. It does not allow us to deal with any other legislation relating to rights of way, so if there was a right of way it would have to be closed under other legislation.

**The Convener:** Perhaps it would be useful for us to know what that other legislation is. If you do not have it in front of you, you could write to us.

**Helen Jones:** We will write to you on that. There is road traffic legislation involved, but we will certainly write to you about it.

10:15

**The Convener:** I am thinking about events such as agricultural shows, where issues involving animal health and crowds and so on come into play. It would be worth our knowing about the matter, given that there are obviously places where rights of way exist in the areas where such events take place.

**Paul Wheelhouse:** That is a very fair point. We can write to you on what other legislation affects such events. Through the provisions of the draft order, we are trying to ensure that core paths are

also covered where there are already defined circumstances where land could be closed in the event of an animal disease outbreak, or indeed in relation to an event. In effect, we are ensuring that core paths are covered by animal health legislation, in the same way that land is.

However, I totally take the point that there may be other circumstances that we can consider through other legislation.

**The Convener:** It could be the case for Barry Buddon—I do not know. That is not in my constituency. It would be valuable to know about the situation regarding rights of way anyway.

Thank you very much, minister. There are no further questions, so I invite the minister to wind up, before we move to the formal process.

**Paul Wheelhouse:** I have nothing to add other than to thank members for their consideration of the draft order.

**The Convener:** Agenda item 3 is the formal part of our consideration of the draft Land Reform (Scotland) Act 2003 (Modification) Order 2013. We have discussed the order already. If there is any interplay between members and the minister at this stage, there is no question of the officials taking part.

*Motion moved,*

That the Rural Affairs, Climate Change and Environment Committee recommends that the Land Reform (Scotland) Act 2003 (Modification) Order 2013 [draft] be approved.—  
[*Paul Wheelhouse*].

*Motion agreed to.*

**The Convener:** We will record that result, and the committee's report will confirm the outcome of our debate, which is in the affirmative.

I thank the minister and his large number of officials, who did not get a chance to speak this time, for their attention. We will see whether we can find some means to bring them all in at another point.

**Paul Wheelhouse:** I am sure you will, convener.

**The Convener:** Under agenda item 4, we must consider a draft document subject to rule 10.5 of standing orders. The Land Reform (Scotland) 2003 (Modification) Order 2013—Statutory Guidance (SG/2013/254) is draft statutory guidance. I refer members to the paper, and ask whether the committee is agreed that it does not wish to make any recommendations in relation to the draft guidance. Are we agreed?

**Members** *indicated agreement.*

**The Convener:** At what will be our final meeting of 2013, so far as we know, the committee will take evidence on the proposed draft Agricultural

Holdings (Scotland) Act 2003 Remedial Order 2014.

I close the public part of the meeting, and ask for the public gallery to be cleared.

10:19

*Meeting continued in private until 12:15.*



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