

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 16 June 2004
(Morning)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

16th 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

THE FOLLOWING ALSO ATTENDED:

Ross Finnie (Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Chris Berry

Catherine Johnstone

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 16 June 2004

(Morning)

[THE CONVENER *opened the meeting at 11:32*]

Item in Private

The Convener (Sarah Boyack): Good morning. First, I remind everyone to turn off their mobile phones. We have received apologies from Alasdair Morrison.

We are about to consider the Water Services etc (Scotland) Bill. I suggest that we take item 5, which is a paper on whom we should have as witnesses, their relative merits and when we should meet them, in private. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Farm Business Development (Scotland) Amendment Scheme 2004 (SSI 2004/236)

11:33

The Convener: Under agenda item 2, we are dealing with the Farm Business Development (Scotland) Amendment Scheme 2004. Members have copies of the instrument. It is an affirmative instrument, so Parliament must approve it before it comes into force. The Subordinate Legislation Committee has considered the instrument and confirmed that it has nothing to report.

I welcome the Minister for Environment and Rural Development, Ross Finnie, who is here to move a motion in his name, inviting the committee to recommend to Parliament that we approve the instrument. As is usual, we have an opportunity to ask technical questions and clarify technical issues when the officials who are with the minister are at the table, but once we move to the formal motion, we will be into the debate and there will be no opportunity for us to do that.

I invite Ross Finnie to introduce his officials and make any opening remarks; we will then come back on factual issues.

The Minister for Environment and Rural Development (Ross Finnie): I am accompanied by Stella Smith, from the solicitors division in my department, and by Henry Snedden, who deals with the farm business development scheme in my department.

I am grateful for this opportunity to explain a minor but necessary amendment to the Farm Business Development (Scotland) Scheme 2001 (SSI 2001/259). As you know, convener, the Farm Business Development (Scotland) Amendment Scheme 2004 (SSI 2004/236) was laid before Parliament on 24 May and, subject to your committee's consideration, is scheduled to come into force on 5 July.

Members will be aware that the scheme is aimed at promoting income-generating opportunities for farming families. However, I have identified an anomaly in the current legislation that could—I stress the word “could”—prevent some family members from receiving support under the scheme. Our aim is to prevent that situation from arising and I have been assured by my officials that no one has been excluded from the scheme on the basis of the anomaly that we have unearthed.

Currently, the scheme legislation permits applications from immediate family members of the legal occupier of an eligible agricultural

holding. A problem might arise in a situation in which the legal occupier is not an individual farmer but a partnership or a limited company. While a partnership has no legal persona and a limited company has a legal persona, they are not natural persons and, therefore, they cannot have a family or eligible family members. As a result, the legislation as currently drafted could be an impediment to family members of farms that are run as a partnership or a limited company receiving the grant. For example, if a farmer operates his business as a husband-and-wife partnership, the current regulations would not allow his son or daughter to apply for farm business development scheme funding. Clearly, that is at odds with the aims of the scheme and the purpose of the amendment is to rectify that inconsistency.

I have corrected the anomaly, on the basis of advice from legal advisers, by clarifying the definition of "eligible persons" at paragraph 2(1) of the instrument. The legal definition of scheme eligibility now includes an additional paragraph that states:

"(d) where such legal occupier is a partnership or company, any member of the immediate family of a partner in that partnership or a director or secretary of that company who resides on or adjacent to that agricultural unit and is acting with the legal occupier's consent except where that immediate family member is also a partner in that partnership or a director or secretary of that company;"

I hope that that will have the effect of removing the anomaly. Of course, that does not mean that every member who applies will necessarily be approved, because the FBDS is a competitive and discretionary scheme.

I hope that the committee understands that, in drawing the original definition in terms that recognised that many farms are run as partnerships, we inadvertently excluded direct personal relations of those farm operatives. The amendment seeks to rectify that situation and I hope that it has the committee's approval.

The Convener: That was a good overview of the purpose of the statutory instrument. Does anyone have any technical questions?

Maureen Macmillan (Highlands and Islands) (Lab): I am sorry to say this, but I found subparagraph (d) to be quite ambiguous, although perhaps I am just being a picky English teacher. It talks about

"any member of the immediate family of a partner in that partnership or a director ... who resides on or adjacent to that agricultural unit".

Is it talking about a director who resides there or a member of the immediate family who resides there? The wording does not seem to be absolutely clear.

Ross Finnie: It is talking about a member of the immediate family. The individual has to be a member of the immediate family and they have to reside on or adjacent to the agricultural unit.

Maureen Macmillan: In that case, it should say, "any member of the immediate family of a partner in that partnership or of a director".

Ross Finnie: It does. I am sorry; I understood the first point that you made, but I do not follow your second point. Clearly, the subparagraph is quite specific. It specifies first of all that, where the legal occupier is a partnership, any member of the immediate family of a partner in that partnership—

Maureen Macmillan: Or the immediate family of a director?

Ross Finnie: It refers to

"any member of the immediate family of a partner in that partnership or a director or secretary of that company".

The two follow on. The subject of the clause is "the immediate family", and it is the immediate family "of ... or", so it is of the limited partnership or the limited company.

Maureen Macmillan: It needs a bit of punctuation, then. I am sorry about this, convener. Does the paragraph refer to the immediate family of a partner or of a director? Is the immediate family the subject of the clause, or are there two subjects, the first being "the immediate family" and the second being "a director or secretary"?

Ross Finnie: No.

The Convener: Just a second. Before we get ourselves totally tied up in knots about how the grammar could or should be expressed in that paragraph, perhaps the minister should tell us clearly what the intent of the sentence actually is, so that when people who are not sure how they should interpret the punctuation ask in the future what is meant they will be able to find out. Will the minister tell us exactly what the intent of that paragraph is?

Maureen Macmillan: That was what I wanted to find out.

Ross Finnie: Our clear intention is to extend the scheme so that the immediate family of the persons who are either partners or directors of the legal occupier are eligible to apply for grant in the scheme.

The Convener: That was quite a clear statement. Has reading that paragraph in the statutory instrument and listening to the minister clarified the intent of the statutory instrument?

Maureen Macmillan: It was my intention that the minister should clarify absolutely what was meant by that paragraph.

The Convener: That clarification has been helpful. Are there any other points of clarification or matters of detail that members are keen to explore with the minister and his officials? If not, we can move to the debate. Members will be interested to know that, technically, we are allowed up to 90 minutes for the debate.

Ross Finnie: Please do not encourage them, convener.

Rob Gibson (Highlands and Islands) (SNP): Is it 90 minutes for each member?

The Convener: No, not for each member but for the entirety of the debate.

We move to the debate on the motion. I invite the minister to move motion S2M-1402.

Motion moved,

That the Environment and Rural Development Committee recommends that the Farm Business Development (Scotland) Amendment Scheme 2004 (SSI 2004/236) be approved.—[*Ross Finnie.*]

Motion agreed to.

The Convener: The motion will be recommended to the Parliament. I thank the minister and his officials for coming along to clarify the intention of the statutory instrument and to set out the policy intention that it is meant to deliver.

Ross Finnie: As they say on such occasions, I am obliged.

Scottish Outdoor Access Code: Proposed Code (SE/2004/101)

The Convener: The next statutory instrument that we have to deal with is the proposed Scottish outdoor access code. Scottish Natural Heritage is required by the Land Reform (Scotland) Act 2003 to draw up a proposed Scottish outdoor access code, which will set out the rights and responsibilities of access for land managers and for all those who exercise their access rights. The Justice 1 Committee has been designated as the lead committee for consideration of the code, but our predecessor committee, the Rural Development Committee, had a strong interest in the Land Reform (Scotland) Bill during its passage through Parliament. The Environment and Rural Development Committee has therefore been identified as a secondary committee.

As a secondary committee, it is our job to draw to the attention of the lead committee any issues that we feel concerned about or any other points that we want to raise, to ensure that they are considered properly. The Subordinate Legislation Committee has considered the proposed code and has confirmed that it has nothing to report. Do members have issues or comments that they want to put on the record for the Justice 1 Committee?

11:45

Alex Johnstone (North East Scotland) (Con): To some extent, I am disappointed that the Justice 1 Committee has been designated as the lead committee for the code. Although I fully approved of the fact that the Justice 2 Committee dealt with the Land Reform (Scotland) Bill during its passage through Parliament, the issues that are covered by the Scottish outdoor access code are very much about practicalities. As a consequence, it might have been more appropriate for this committee to consider the detail of how the code will be implemented.

I had discussions with some of the representative organisations that were involved in preparing the code, and I share their general view that access to Scotland's countryside is important, and that we have a long tradition in this country of free access to the countryside, but that there are issues in the code that raise questions that have to be addressed.

I will briefly go through some of the matters that have been brought to my attention, particularly issues such as the exercising of rights of access on tram lines within standing crop. That may be a practical way to cross a field—I do it myself when I am on foot—but, if progress is by horse or bicycle, it could be somewhat less practical, and it has the potential to damage crops. Those concerns have been raised with me.

There are also issues about the definition of "customary access", which has raised concerns in certain circles. The suggested practices of leaving field margins open and introducing stiles to facilitate access raise points about the liability of landowners for the safety of people who take access under the code.

It would be remiss of me not to point out something that has been pointed out from the start of the process, which is the danger that farm animals pose to people who take access in the countryside. A report was published recently from an inquiry in Dingwall earlier this year into an incident in which a man was killed by farm livestock while he was taking access. It remains a grave concern of many people, particularly those of us who keep cattle, that cattle are perceived as passive vegetarians by many people who do not understand what they are in reality. Those of us who have worked among cattle all our lives realise that, in some cases, they are extremely large and extremely aggressive, and that they will take action that surprises many people. That is particularly the case when dogs are involved, because cows have an intense dislike of dogs.

It is important that we ensure that the Justice 1 Committee is aware that there are concerns about the access code. I re-emphasise that it is

extremely important that we afford people access to our countryside, but there remain concerns among interested organisations, such as NFU Scotland and the Scottish Landowners Federation—I cannot remember what it calls itself now, because it changed its name recently. I hope that the Justice 1 Committee will take those concerns into consideration.

Roseanna Cunningham (Perth) (SNP): I associate myself with the remarks that Alex Johnstone made at the outset. I find it astonishing that the Justice 1 Committee has been made the lead committee on the access code, because if there is anything that more clearly relates to environment and rural development than an outdoor access code, I cannot think what it is. It is a strange decision, and the convener might wish to query the rationale behind it.

I understand that the decision was based on the fact that the Land Reform (Scotland) Bill was dealt with by a justice committee, but the code is not the bill; as Alex Johnstone said, the issue is the nitty-gritty of how the access code will work. The Justice 1 Committee is more likely to look at the code in a technical and legalistic way, which is not the same as the way in which we might want to look at it.

We received the proposed code only on Friday, so we have not had the opportunity to consult some of the bodies that might have a direct interest in it, including local access forums, where they have been set up. I know of one such forum that has set up a local meeting.

Given the time limit—Parliament must deal with the code by 9 September—perhaps the committee has the opportunity to issue a call for evidence to ask people to contact us directly over the next couple of weeks with their comments on the code. I do not know what business we are due to consider in the two committee meetings that we could have before the recess, but I for one would like the opportunity to spend a bit more time considering the access code. The code will have a profound impact on the way that the countryside works from now on.

The Convener: Having consulted the clerks on the opportunities that are available to us, I understand that the Justice 1 Committee has already issued a call for evidence, so that call is out there. We could consider putting the code on our agenda for next week, because the Justice 1 Committee will not examine the code until the last week before the recess.

Alex Johnstone: Has the Justice 1 Committee received any evidence so far in response to that call?

The Convener: We can check that out.

We will have time to consider the code next week. That would at least give members time to read through the code. Some issues that Alex Johnstone highlighted are dealt with effectively in the code, but there would certainly be no harm in our airing the issues to ensure that the Justice 1 Committee is aware of them. We could ensure that the issues that our committee would be keen to pursue are on the Justice 1 Committee's agenda before it considers the code. If we considered the code at our meeting next week, our comments could be given to the Justice 1 Committee in time for them to be included in that committee's papers, which are issued before the weekend. That would meet members' concerns that environmental and rural perspectives will not be taken on board. Are members happy with that proposal as a practical way in which to proceed?

Rob Gibson: I was not an MSP when the Parliament established the requirement for a code, so I have a concern about paragraph 4.7, which is headed "Respect access rights in managing your land or water". The paragraph prohibits land managers from putting up any intimidatory sign or notice—

The Convener: We will come back to the detail of the code next week.

Rob Gibson: I flag up the issue now because I do not know whether there was any discussion about having standardised language for how such things are communicated. We need to ensure that people around the country understand the instructions that are put up about specific aspects of access. I need to know things like that. Of course, I could go and read up on the issue, but I want to highlight the matter for the Justice 1 Committee. More detail needs to be given on a number of such matters to clarify the practicalities of access arrangements. Perhaps we are aware of those issues in a way that the Justice 1 Committee is not.

The Convener: The idea of buying ourselves another week is to allow members to do a bit more reading on the topic so that, when we submit our comments to the Justice 1 Committee, we will have had a bit of space to think through what our priorities are.

Rob Gibson: I hope that the Justice 1 Committee will read the comments that we have made today.

Nora Radcliffe (Gordon) (LD): I do not remember any specific issues being raised on that point, but I have previously highlighted the need to have some accepted conventions on signage. That will be particularly important for the wonderful core path networks that are to be developed. Now would be a good time to try to achieve some consensus, so that there is a degree of conformity.

Karen Gillon (Clydesdale) (Lab): I agree with other members that it would probably have made more sense for the code to be given to our committee for consideration. However, we can have little argument with that because we probably all voted for the Justice 1 Committee to deal with the draft code. Perhaps we need to pay more attention in the future before we vote on Parliamentary Bureau motions that designate lead committees for such items.

The Convener: I confess that I was conscious that the code was coming up, but I did not fight to the death for us to be designated as the lead committee for it. Members might ritually humiliate me over that, but I knew that we had a pretty heavy schedule this month. If we can have a compromise by ensuring that we have time to examine the code before the Justice 1 Committee considers it, we should be able to consider the issues without being totally responsible for dealing with the whole code.

The code contains a number of big legal issues. The previous Justice 2 Committee hammered out in detail what it expected to come out of the Land Reform (Scotland) Act 2003, so I assume that the Justice 1 Committee will be concerned to ensure that fine balance. It will want to examine whether the provisions of the access code meet not only the legal objectives but the spirit of the legislation, which was about ensuring that there is real access.

We can explore Rob Gibson's and Alex Johnstone's detailed comments in a bit more depth next week. I appreciate that it would be helpful to members if they could have sight of any submissions that have been received thus far. However, we will have quite a tight deadline for feeding our comments back to the Justice 1 Committee. If members have some clear thoughts by next week, that will help us to have a more useful and constructive session.

I thank members for their comments. We will return to the issue next week.

**Plant Health (Export Certification)
(Scotland) Order 2004 (SSI 2004/248)**

**Plant Health Fees (Scotland) Amendment
Regulations 2004 (SSI 2004/249)**

**Seed Potatoes (Fees) (Scotland)
Regulations 2004 (SSI 2004/250)**

**Potatoes Originating in Poland
(Notification) (Scotland) Order 2004
(SSI 2004/255)**

The Convener: For agenda item 4, we have four instruments to consider under the negative

procedure. For the record, the instruments are: the Plant Health (Export Certification) (Scotland) Order 2004 (SSI 2004/248); the Plant Health Fees (Scotland) Amendment Regulations 2004 (SSI 2004/249); the Seed Potatoes (Fees) (Scotland) Regulations 2004 (SSI 2004/250); and the Potatoes Originating in Poland (Notification) (Scotland) Order 2004 (SSI 2004/255).

I am happy to confirm that all four instruments have been considered by the Subordinate Legislation Committee, which had nothing to report. If members have no policy issues to raise on the instruments, are they content to make no recommendation to the Parliament on the instruments?

Members indicated agreement.

The Convener: That brings to a close the public part of this morning's meeting. We move briefly into private session for agenda item 5.

11:56

Meeting continued in private until 12:25.

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