

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 30 June 2004
(Morning)

Session 2

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CONTENTS

Wednesday 30 June 2004

Col.

SUBORDINATE LEGISLATION.....	1076
TSE (Scotland) Amendment Regulations 2004 (SSI 2004/277)	1076
Pig Carcase (Grading) Amendment (Scotland) Regulations 2004 (SSI 2004/279)	1076
Conservation of Seals (Scotland) Order 2004 (SSI 2004/283)	1076
Waste Management Licensing Amendment (Scotland) Regulations 2004 (SSI 2004/275)	1076
Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 (SSI 2004/278)	1076
Beef Carcase (Classification) (Scotland) Regulations 2004 (SSI 2004/280)	1076
Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004 (SSI 2004/276)	1076
Environmental Protection (Restriction on Use of Lead Shot) (Scotland) Regulations 2004 (SSI 2004/289)	1079
WORK PROGRAMME	1082

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

18th 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 :

Dr Sylvia Jackson (Stirling) (Lab)

David Mundell (South of Scotland) (Con)

CLERK TO THE COMMITTEE

Tracey Haw e

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Chris Berry

Catherine Johnstone

LOCATION

Committee Room 3

Scottish Parliament

Environment and Rural Development Committee

Wednesday 30 June 2004

(Morning)

[THE CONVENER *opened the meeting at 11:42*]

The Convener (Sarah Boyack): Colleagues, welcome to our last meeting before the summer recess. I welcome committee members, any witnesses, the press, members of the public and colleagues from the Parliament. Apologies have been received from Alex Johnstone, who cannot be with us this morning. He is continuing the meeting up in Aberdeen that the rest of us were at yesterday. It will be useful to get his feedback on that after the recess. I remind people to turn off their mobile phones.

Those of you who have read the *Business Bulletin* this morning will note that Eleanor Scott is leaving the committee and will be replaced by Mark Ruskell of the Green party. Eleanor has been a quiet, calm and persistent voice and I have enjoyed working with her, especially because I know that she reads every paper that she is sent and always raises issues when she thinks that something needs to be put on the agenda. I am sure that all members will join me in thanking her for all her hard work in the first year of the committee. It has been interesting to have a member of a different party as my deputy convener. We have not fallen out in public—or even in private—and that is quite an achievement.

Subordinate Legislation

11:43

The Convener: Agenda item 1 is subordinate legislation. We have a bumper pack of eight pieces of subordinate legislation to consider. I welcome to the committee David Mundell, who has indicated that he would like to speak briefly to the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004 (SSI 2004/276). Copies of the instruments have been circulated to members. The Subordinate Legislation Committee has already considered the instruments, and members have an extract of its 29th report.

TSE (Scotland) Amendment Regulations 2004 (SSI 2004/277)

Pig Carcase (Grading) Amendment (Scotland) Regulations 2004 (SSI 2004/279)

Conservation of Seals (Scotland) Order 2004 (SSI 2004/283)

The Convener: No comments have been received from the Subordinate Legislation Committee on these instruments.

Waste Management Licensing Amendment (Scotland) Regulations 2004 (SSI 2004/275)

Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 (SSI 2004/278)

Beef Carcase (Classification) (Scotland) Regulations 2004 (SSI 2004/280)

The Convener: Do members have comments on any of the instruments?

Members: No.

11:45

The Convener: I have read the comments of the Subordinate Legislation Committee, which are helpful and detailed, but I am not sure that there is anything that need delay the instruments.

Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004 (SSI 2004/276)

The Convener: David Mundell has indicated that he wishes to speak to this order.

David Mundell (South of Scotland) (Con): I am here on behalf of my colleague Alex

Fergusson, who is the member for Galloway and Upper Nithsdale. Unfortunately, Alex is unwell this morning. In fact, he has had to go to hospital.

I know that Mr Morrison took part in a members' business debate that Alex Fergusson instigated on inshore fishing and on the particular difficulty that had arisen in his constituency in relation to the activities of a supercrabber vessel. In Galloway, most of the traditional activities are carried out by small fishing operations run by individuals who collect crabs, shellfish and other sea creatures. The supercrabber turned up last year. Effectively, it is a large hoover that hoovers up everything within the vicinity. Alex Fergusson and other committee members have had concerns about the issue. Alex is very supportive of the passing of the measures in the order, and he is anxious that the committee support it. He believes, however, that the measures are too little, and that we should work towards an equivalent of the three-mile limit that applies in England. That limit is one of the reasons for the supercrabber turning up off Scotland.

The Isle of Man, which is only 18 miles from the Galloway coast, is seeking to apply a 12-mile limit, which will cause further displacement. The point that Alex Fergusson wanted to make to the committee was that, although the provisions of the order form a welcome interim measure, much more requires to be done if the traditional marine crofting—as it is often called—that takes place off the Galloway coast is to continue. In particular, a three-mile limit should be imposed.

The Convener: I thank David Mundell for those comments. It is useful to get that local perspective on the record. We have had other discussions of a similar nature in the past. I invite any further comments.

Mr Alasdair Morrison (Western Isles) (Lab): First, I hope that Alex Fergusson recovers and is out of hospital soon.

I agree with the general thrust of what David Mundell has said, and I appreciate what he and Alex Fergusson have done on the matter. I did indeed take part in the members' business debate on this issue, which I think took place at the end of last year. We face this challenge in the Western Isles, too. The lobster and scallop fisheries are subject to similar predation by vessels and fishing methods that do not lend themselves to sustainability.

The measures that are before us represent an important starting point. David Mundell might not be aware of it, but there is an on-going process under which the Inshore Fishing (Scotland) Act 1984 has been subject to some amendment. That debate with the industry continues. We in the Western Isles will be playing a full part in that as

soon as this Saturday, when the Western Isles Fishermen's Association holds its annual general meeting. I would urge Alex Fergusson and David Mundell to exhort the fishermen of their constituencies to do likewise to ensure that they inform the process and that the necessary measures are put in place for inshore fisheries to be sustained. If we sustain the stocks, we protect jobs, both at sea and on land, and that is something that I am keen to see, not just from the perspective of my constituency, but for inshore fisheries throughout Scotland.

The Convener: That has highlighted the principles of maintaining a sustainable fishing industry. I like the phrase "marine crofting", which David Mundell used. There is great sympathy on the matter around the table.

Are members content with the instruments and happy to make no recommendation to the Parliament?

Members indicated agreement.

The Convener: That is super.

I would like now to move on to the final piece of subordinate legislation.

Karen Gillon (Clydesdale) (Lab): I am sorry, convener, but I would like to go back to the Waste Management Licensing Amendment (Scotland) Regulations 2004 (SSI 2004/275).

The Convener: We have already dealt with those regulations, but go ahead if you want to make a brief point.

Karen Gillon: The issue has caused considerable concern in my area. My reading of the instrument left me slightly unclear about the policy implications of some of the regulations. The storage of liquid sludge in an open lagoon, which appears to be a new provision, causes me considerable concern. Can we write to the minister for clarification on such issues?

The Convener: You have identified a new policy issue. I suggest that we write to the minister to ask him to clarify that specific point during the summer recess, so that we can report formally to members—I think that we have time to do that. Are members content with that suggestion?

Members indicated agreement.

The Convener: The committee will make no recommendation on the six statutory instruments—in effect, we have cleared them through—but we will put a question mark over the Waste Management Licensing Amendment (Scotland) Regulations 2004 (SSI 2004/275) and consider those regulations again at the start of the new parliamentary year.

Environmental Protection (Restriction on Use of Lead Shot) (Scotland) Regulations 2004 (SSI 2004/289)

The Convener: Members have the Subordinate Legislation Committee's detailed 10-page paper on the regulations, which has just arrived. That committee met yesterday and it is fair to say that it has strong concerns about the regulations and has drawn those to our attention. Sylvia Jackson, the convener of the Subordinate Legislation Committee, is here and it might be appropriate to ask her to make a few comments that outline the committee's main concerns before we consider the regulations.

Dr Sylvia Jackson (Stirling) (Lab): The Subordinate Legislation Committee is so concerned about the instrument that it has written to the Scottish Executive to ask that it be remade and relaid. We passed our report to the Environment and Rural Development Committee speedily in the hope that procedures would allow the committee to reconsider the instrument after the summer recess.

The main point is that the instrument raises vires issues, in that the regulations do not appear to follow the parent act, the Environmental Protection Act 1990. The first question that the Subordinate Legislation Committee raised with the Executive was whether notice of the making of the regulations was published in the *London Gazette* as well as in the *Edinburgh Gazette*. That might seem to be quite a small matter, but our legal advice clearly states that the correct procedure was not followed.

Secondly, the committee asked the Executive to explain what power authorises the conferral of powers and duties on the police under regulations 5 and 6. The enabling power does not appear to permit provisions of that nature to be made in the regulations. I refer members to paragraph 8 of the extract from the Subordinate Legislation Committee's 30th report, which gives the Executive's response:

"The Executive considers that section 140(3)(c) of the 1990 Act allows Ministers to authorise constables to exercise powers as specified in the Regulations and in particular those set out in regulations 5 and 6. The effect of regulation 5 is to directly authorise constables in relation to those functions. Although the expression 'authorise' is not used it is clear that that is the effect of the provision."

The committee's legal advice is not in agreement with the Executive's position. In paragraph 9, we say:

"The Committee reads the enabling power not as saying that the Regulations may themselves authorise persons to carry out certain functions but that the Regulations may confer powers on the Scottish Ministers or any local or other authority to authorise persons to carry out certain functions."

We go on to say that it is clear that the provisions of the enabling power

"specifically provide that an authorised person can be accompanied by a constable for certain purposes."

An "authorised person" is therefore a person other than a police officer.

In paragraph 14, we say:

"there is no doubt in the Committee's mind that, in purporting to confer enforcement powers on the police, the Regulations fail to respect the enabling power and to that extent there are serious doubts as to whether they are *intra vires*."

In its third question—I am nearly at the end now—the committee asked the Executive to explain what power authorises regulation 5(1)(a), as nothing in section 108 of the Environment Act 1995 seems to authorise providing for powers to stop and search under the regulations. That is possibly the more serious of the three issues. The word "astonishment" could be used to describe the committee's reaction to the Executive's response. The Executive appears to admit that the enabling powers do not allow it to do what it wants to do, so it has simply ignored the enabling powers and drafted the regulations to meet policy requirements.

Paragraph 22 says:

"A power to stop and search is not ... a minor point of detail but ... controversial and a severe impingement on civil liberties."

The report continues:

"It is ... the Committee's view that not only are these provisions"

undoubtedly ultra vires

"but they ... also breach Convention rights and in particular Article 8 of the ECHR".

The Subordinate Legislation Committee draws this committee's attention to the regulations on those grounds.

The fourth question that we asked the Executive was about another vires issue. Questions 5 to 9 may be less important; they concern defective drafting.

The Convener: I thank Sylvia Jackson for that clear presentation. The issues are complex, but her explanation described her committee's concerns effectively.

The suggestion is that we do what we have done before: we can write to put the points to the minister and ask him to consider re-laying the regulations because of the questions about vires and whether the regulations do what they are intended to do. We have time to consider the matter in September.

I do not know how other members feel. I support the policy intent of the regulations. Our job is to consider the policy issues and I have no problems with the objectives that the minister has set out in the regulations, but the points that Sylvia Jackson has drawn to our attention place a serious question mark over whether the regulations will deliver what they are meant to deliver. Writing to the minister would be a straightforward way in which to proceed. It would give the minister the chance to consider withdrawing the regulations and putting a new set in place and to reply to us in the summer. Do members agree with that suggestion?

Members indicated agreement.

The Convener: I thank Sylvia Jackson for her attendance, which was helpful.

Work Programme

11:58

The Convener: Members have an update on the work programme and an indication of the committee's likely work from September to December 2004. I thought that it would be useful for members to see what our commitments are, so that you can adjust your diaries accordingly—you can book out September for water.

I will run through my main proposals to check that members are happy with them. I ask members to note the likely timeframes for undertaking our work on the Water Services etc (Scotland) Bill and other forthcoming Executive legislation.

We have the option of having briefings from Executive officials on quality and standards III and the principles of charging, which we could have at the same time as we deal with stage 1 of the Water Services etc (Scotland) Bill. I suggest that we take an informal briefing from Executive officials and formal evidence from the minister on the record. Are members happy with that?

Members indicated agreement.

The Convener: I ask members to note the time commitments that are likely to arise from the referral to us of other business that we must deal with, such as subordinate legislation, budget scrutiny—to which we will have to return in the light of our previous budget report to the Finance Committee—and European matters.

Members will also want to note the time commitments that will arise from work that relates to the petitions on odour nuisance, on which we have been working for some time.

I would like members' comments on following up the issues that we addressed in our report on common agricultural policy reform in relation to the Scottish rural development plan for 2007 to 2013. Our report contained many conclusions and recommendations and it would be useful to follow those up as part of the European updates, if members are happy with that.

Members should note that a final research report on sustainable development will be available in September. We will have to think about how we publish that report at that time and about how we follow up on what was quite a major piece of work.

I have suggested that we might want to seek Conveners Group approval for a visit to Cardiff, to discuss the work that the National Assembly for Wales has been doing on sustainable development and to have an exchange of views on some of our big work programme issues. We

will be able to share ideas on best practice and how to improve the work that we do. In light of that visit, we might want to defer any committee away day until later in the year, rather than have one over the summer.

I have taken some informal soundings and talked to the clerks about our likely time commitments, and those are my recommendations. Do members have any comments?

Rob Gibson (Highlands and Islands) (SNP): I am happy to endorse the approach that the convener has adopted. I have a small, specific question about sustainable development. I think that I am right in saying that we have now made a submission to the United Kingdom consultation, which we talked about last week. I just wanted to confirm that, because it is important that we can see a little bit of our input.

The Convener: That is correct. Tracey Hawe has just told me that copies of our submission will be with me this afternoon to send out to members for information, so you should look out for that in your e-mail.

Rob Gibson: Thank you.

Mr Morrison: Is the committee's first meeting after the recess on 8 September?

The Convener: I will come back to that.

Karen Gillon: I would definitely like us to follow up the development of the Scottish rural development plan through the European updates. It is important to keep rural development on the agenda, given that we will be considering so many environmental issues over the next few months.

The Convener: It is important that we do that, especially in light of the recommendations that we produced on the flexibility that could be in the rural development plan, which would help to create a sustainable rural economy.

That is fine; everyone is happy with the work programme.

Meeting closed at 12:02.

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