

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 12 January 2005

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

1st Meeting 2005, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Rob Gibson (Highlands and Islands) (SNP)

*Karen Gillon (Clydesdale) (Lab)

*Alex Johnstone (North East Scotland) (Con)

*Richard Lochhead (North East Scotland) (SNP)

*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)

Eleanor Scott (Highlands and Islands) (Green)

*attended

THE FOLLOWING GAVE EVIDENCE:

Ross Finnie (Minister for Environment and Rural Development)

Barry McCaffrey (Scottish Executive Legal and Parliamentary Services)

Roy McLachlan (Scottish Executive Environment and Rural Affairs Department)

Linda Rosborough (Scottish Executive Environment and Rural Affairs Department)

Charles Stewart Roper (Scottish Executive Environment and Rural Affairs Department)

CLERK TO THE COMMITTEE

Mark Brough

ASSISTANT CLERKS

Chris Berry

Catherine Johnstone

LOCATION

Committee Room 1

Scottish Parliament

Environment and Rural Development Committee

Wednesday 12 January 2005

[THE CONVENER *opened the meeting in private at 10:34*]

11:32

Meeting continued in public.

Subordinate Legislation

Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004/518)

The Convener (Sarah Boyack): I call the meeting to order and welcome members of the public—although I am not sure that we have any this morning—members of the press, colleagues and the Minister for Environment and Rural Development and his officials.

We have two instruments to consider under the negative procedure: the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 and the Environmental Information (Scotland) Regulations 2004. The Subordinate Legislation Committee has considered both instruments and a copy of an extract from its report has been circulated, which comments briefly on only the environmental information regulations.

We agreed to take evidence from the minister on instruments implementing reform of the common agricultural policy in Scotland when the first set of such instruments were before us. I am pleased that we have the minister here today. Given that the environmental information regulations relate significantly to the freedom of information regime, which came into force on 1 January, the minister has also agreed to give evidence on those regulations. Two fairly substantial pieces of work are therefore before us. I intend to take consideration of the CAP instrument first; we will have a debate on it to allow members to comment on it or ask questions about it. Once we have dealt with that, we will move on to the environmental regulations.

It was remiss of me not to remind everybody to switch off their mobile phones.

The Minister for Environment and Rural Development (Ross Finnie): Good morning. As the convener has indicated, the new system of

farm support started just over a week ago. The new system gives us an opportunity to develop a more competitive and sustainable agricultural industry in Scotland in line with the agricultural strategy. Implementing the new system has been and is a substantial task. The paper that we sent to you before Christmas on implementing the CAP reforms in Scotland set that out and showed you the process for clarifying and creating the new system.

It has been challenging because, regrettably, one or two quite important late changes have emerged from Brussels, over which we have no control. Clearly, it would have been highly desirable for all the instruments to have come to the committee before 1 January. I am afraid that, for technical reasons, which we can elaborate on if you wish, that has simply not proved possible.

Notwithstanding that, we have worked very closely with all the stakeholder groups, including environmental organisations and producer groups, on how the details should be applied in Scotland. We have worked hard to keep those stakeholder groups and end users—farmers and crofters—involved and informed. We have held several well-attended meetings throughout Scotland in developing and finalising the regulations.

There will be a series of regulations, the first set of which is before you now. The Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 were laid before the Parliament at the beginning of December. They implement the Scottish framework for cross-compliance and the standards of good agricultural and environmental condition. They will be followed by regulations on the beef national envelope, on the single farm payment scheme and on the appeals mechanism. There will also need to be a United Kingdom statutory instrument on the integrated administration and control system—IACS—to cover matters that must be designated not at the discretion of the European Union at a regional level, but at a member-state level.

I take this opportunity to make it clear that the new system provides a subsidy in return for farmers meeting environmental and agricultural standards. In my opinion, it is right that there should be increased accountability for that money. I want there to be far greater disclosure information about all farm subsidies under the Freedom of Information (Scotland) Act 2002. I would be happy to proceed to any questions that the committee may have in relation to the instrument before you.

Maureen Macmillan (Highlands and Islands) (Lab): I wish to ask you about wetlands. We received a letter from you saying that they were now to be included in the register of protected areas. While the Water Environment and Water

Services (Scotland) Bill was being considered, we discussed how we might help farmers to let their land revert to wetland in cases where it had been reclaimed and used for grazing. As I was driving down to Edinburgh on Monday, looking at the flooding by the Tay, I wondered whether we ought to be thinking about this more. Is there anything in the cross-compliance regulations to encourage farmers to convert their land to wetland or let their land revert to wetland where it had been wetland historically?

Ross Finnie: There are two elements to that. I will deal with the first, and Roy McLachlan will elaborate on the second. You will be aware that the legislation that we passed nearly two years ago, the Water Environment and Water Services (Scotland) Act 2003, transposed the water framework directive into Scots law. Having got that legislative base, we are still developing a number of areas. There is the whole question of river basin management and flood plain management, if we take wetlands in their widest sense. We are still working towards the implementation of that.

I will ask Roy McLachlan to address the specific question about wetlands. During your journey south, you noticed, as have we all in recent years, the fact that too many of our flood plains have been built on. We need to do something to restore the situation, which has forestry and agricultural implications. I invite Roy to discuss how specifically the cross-compliance regulations apply to that.

Roy McLachlan (Scottish Executive Environment and Rural Affairs Department): Under the cross-compliance regulations, farmers may allow land to revert for environmental benefit, provided that they notify us in advance that they are doing so. The one caveat is that the land has to be able to be returned to agriculture in future, if that is the desired policy at the time. In addition, and outwith the cross-compliance regulations, we have agri-environment schemes—notably the rural stewardship scheme—in which farmers receive an annual payment per hectare for allowing lands to revert to being wetlands.

Maureen Macmillan: So encouragement comes from the agri-environment schemes rather than from the cross-compliance regulations. The regulations seem to be neutral—people can do things if they want to, but there is no encouragement.

Ross Finnie: There is, because farmers will not receive their single farm payment if they do not comply. That seems pretty fundamental.

Maureen Macmillan: No, because they would get their payment if they had a meadow beside a river and kept it as grazing land.

Ross Finnie: No, I really have to emphasise this

point. The inspection regime will ensure that people meet all the requirements of cross-compliance. Meeting those requirements is the fundamental precondition for receiving the single farm payment. It will not be good enough simply to say, "I've got my farm and this is the way I've always kept it." People will have to meet all the cross-compliance requirements that are set out in the regulations before the committee.

Maureen Macmillan: I understand that. However, the grazing lands next to the River Tay are farmed not as wetlands but as ordinary fields. Perhaps it would be better environmentally if those lands were to become wetlands, but the regulations do not encourage that.

Ross Finnie: All right—but one would love every measure to do everything. As Roy McLachlan has explained, we can assist through the agri-environment programmes, if not specifically through the regulations.

Maureen Macmillan: That is what I wanted to have you clarify.

Linda Rosborough (Scottish Executive Environment and Rural Affairs Department): Environmental gain through the creation of wetland grazing areas is covered in the advisory guidelines as an example of good practice within the overall cross-compliance measures. The guidelines are therefore not simply neutral; they are more positive.

Maureen Macmillan: Thank you. That is what I wanted to know.

The Convener: I think that we have teased out the answer to that question.

Alex Johnstone (North East Scotland) (Con): I want to start by saying to the minister that, having read through the regulations, I find nothing that I would not consider to be good agricultural practice. It is therefore reasonable to expect the farming community to pursue the measures. The regulations will alleviate the fears that some people had—that the conditions would be so onerous as to make farming practice difficult.

I want to ask about the enforcing or, if you like, the policing of these regulations. Will it be necessary to expand significantly the manpower of the Scottish Executive Environment and Rural Affairs Department? Will the enforcing and policing of the regulations have cost implications?

Ross Finnie: We certainly hope not but, before elaborating, I want to say that it is always good to have the warm and full support of a dairy farmer for any agricultural measures.

We are trying to co-ordinate the inspection regime across all the regulations. The department has spent quite a bit of time ensuring that we do

not have multiple visits to farm premises. Over a reasonable time span, we want to ensure that we are able to visit a range of farms. We will be considering how to programme that.

We hope that not less than 5 per cent of those in receipt of the single farm payment will be subject to cross-compliance inspections, failure in which could lead to penalties. The question would then arise whether people had simply failed to comply, or whether they had deliberately failed to comply. If we believe that someone is simply deliberately ignoring the regulations, they will be brought within the penalty regime.

Alex Johnstone: I assume from that answer that there will be a degree of flexibility in cases in which a farmer has difficulty in conforming to the regulations. I assume that in such cases the first course of action would not be to remove the entitlement to support, but to retain the entitlement and give the farmer the facility to comply subsequently.

11:45

Ross Finnie: The difficulty with all regulations, not just agricultural ones, is that there is always a subjective element. We have gone to some lengths to train and prepare our agricultural staff and we will continue to do so to try to ensure that we apply the regulations uniformly across the piece, which we are conscious is required. We do not want to be accused of using subjective judgment in the application of the regulations, although there will inevitably be an element of that.

There are two types of cases. In cases of negligence, the farm payments may be reduced by 3 per cent, but in cases of simple non-compliance more substantial reductions may be made. The system contains a clear penalty element.

Alex Johnstone: My next question is on a slightly different tack, but it is still on the subject of enforcement and policing. Since we joined the European Union and became involved with the common agricultural policy, accusations have been made periodically that regulations have been enforced more strictly and with more impact in the United Kingdom than they have been in other European countries. Those accusations were sometimes true and sometimes not. How can we ensure that the present regulations will not be imposed in Scotland in a way that will impose an economic disadvantage on farmers in comparison to their competitors in other European countries?

Ross Finnie: As you say, there is an anecdotal perception that we have applied the agricultural subsidy regime more stringently than other countries have. You will recall that, in 2000, we set up a little group of people from the agriculture sector to investigate and examine the way in

which we applied the regime but, much to the group's astonishment, it had to conclude that we were not over-egging the regulations.

I assure you that we seek to interpret and implement the new scheme as fairly as possible. However, we are conscious that substantial sums of public money are being expended through the single farm payment and that the public are entitled to expect compliance with the regulations that are before the committee. That is an important element. In my discussions with the industry, I have made it clear how important it is that both the letter and the spirit of the cross-compliance regulations are adhered to.

Alex Johnstone: Will the so-called level playing field continue to be monitored on a Europe-wide basis?

Ross Finnie: We will continue to ensure that we do so but, as I say, we have gone to great lengths internally to ensure that the regime is not disruptive, particularly given that inspection continues to be a key element in the enforcement of the regime. We intend to co-ordinate the requirements for inspection in a way that will not lead to multiple farm visits, which are the most disruptive aspect of the regime for the economic progress of individual farms.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): I welcome the regulations, but I have a question about monitoring and review. The regulations will establish a baseline from which we can, I hope, go on to improve the condition of our agricultural environment over time. On some aspects, particularly soils, we have a long way to go to meet best practice and to show substantial improvement. I want to quiz the minister a bit more on that. How will the Executive review the conditions and monitor them over time? How might we go beyond what is proposed and set more stringent standards as conditions improve over the years and decades ahead?

Ross Finnie: Mark Ruskell's question contains two separate elements, which I want to separate out into what might loosely be called issues concerning the management of the land—such as the different ways in which we monitor things such as soil condition and quality across the piece—and the way in which those issues interface with the regulations that are before us today. We must remember that it is not entirely at our hand to change the level and range of the standards that apply under the common agricultural policy instrument. On the other hand, that does not prevent the Scottish Executive from having a general land environment policy or from seeking to use other instruments to achieve that policy. The issue is how we mesh those two things together.

I am conscious of the point that has been made. It is all very well to specify what constitutes a good agricultural standard today, but surely we must have an aspiration about where we want to be tomorrow. I am sympathetic to that view. However, I must inform the committee that the standards that are set under the regulations are required to reflect those that are given in the directive.

Linda Rosborough: As well as the need for equity in the application of the directive across Europe, a consideration is that setting the threshold too high could ultimately mean that we suffer disallowance if we fail to meet the standard that has been set. As the money is European money, we are required to have discussions with European auditors. They have been surprised at the standards that we have set on good agricultural and environmental condition. They felt that we have set ourselves a challenging task. Such issues also need to be taken into account.

The Convener: We will stop at that point because we are experiencing some technical difficulties. As members may have noticed, the microphones have not always switched on for the correct speaker. I understand that we need to suspend the meeting for a couple of minutes to reboot the system.

11:52

Meeting suspended.

11:56

On resuming—

The Convener: Before we were interrupted, Linda Rosborough had just answered a question that Mark Ruskell had asked. He wants to pursue the topic further.

Mr Ruskell: I hope that you can hear me a bit better now.

Clearly, there is an issue about improving environmental conditions across Europe. There will be some variation. For example, it has been said that the English standards are a lot higher than those of other countries. I am a great believer in progress and I think that the point is to effect change that will result in improving environmental conditions across Europe. How will you monitor progress in Scotland and feed that into the process of moving the baseline? If progress is not being monitored and reviewed, how can we ensure that the whole of Europe, including Scotland, makes progress on improving the condition of soil, wetlands and so on?

Linda Rosborough: There is a requirement to assess the impact of the system in the new framework for the single farm payment scheme. In

the past, that was not normal practice for pillar 1 schemes. That requirement will be replicated in other European countries, and the impact of the scheme will be measured in that way.

Mr Ruskell: How will that monitoring be effected in Scotland?

Linda Rosborough: Our analysts will work out a programme of monitoring but they have not started doing that yet.

Mr Ruskell: Will that feed into an eventual review?

Linda Rosborough: We are required by Europe to analyse the impact of the programme that we are implementing, which will then feed into European consideration of the impact of the programme.

Mr Ruskell: Is there a timescale for that?

Linda Rosborough: No.

Mr Ruskell: Clearly the requirement to keep land in "good agricultural and environmental condition" is meant to ensure compliance with various European directives. Does it ensure compliance with the water framework directive?

Linda Rosborough: The GAEC requirements do not do that. Perhaps Roy McLachlan can help with that question.

Roy McLachlan: That is not one of the 18 regulations that are within the statutory management requirements for cross-compliance.

Mr Ruskell: Will it become one of the regulations that will ensure compliance?

Ross Finnie: It is more likely that there will be regulations to take further the water framework directive. Among other things, we are working on what other regulations are required. We have the framework, because we have passed the 2003 act and we have done a lot of work with the Scottish Environment Protection Agency and others to analyse river basins and get a better idea of the base level, catchments and characteristics. You will be familiar with all of that. The next element of our work will be to decide whether we need powers to ensure that the landowners and managers who are within those catchments are doing what is required to meet and raise the standard.

The next trick will be to ensure that we do not end up with silos. We need a lot of cross-fertilisation, which leads us to consider the crossover between forest management and, for example, water-basin management or land management. We are conscious of that but we are still at the stage of trying to work that up. When that comes forward, we would like to think that—*[Interruption.]* It sounds like an alien species has

just landed in the room. We would like to think that we could co-ordinate that in a way that brings the desired effect.

12:00

The Convener: At some point, we will get feedback on where we fit with the rest of Europe in relation to how the scheme is impacting on the wider environment. That picks up on the point that Alex Johnstone made about whether we are going too far and on Mark Ruskell's point about whether we are going far enough—I am sorry for broadly paraphrasing everybody's views. It will be useful for us to get a sense of the overall achievements that are likely across Europe.

Richard Lochhead (North East Scotland) (SNP): I was interested in the minister's reference to a female being an alien species.

Alex Johnstone has asked about many of the points that I was going to raise. I would like more information on the inspections. Given that farmers will have to adhere to many regulations, can you say how many times each farm will be inspected and by whom? Will a plethora of organisations be involved or will the inspections be co-ordinated so that only one body looks after them?

Ross Finnie: SEERAD is the principal inspector in relation to any regulations that we enact. As I have made clear, we are trying to ensure that there is a single inspection, something that is helped by the fact that fewer schemes are now in operation.

Under the regulatory regimes that are swept up in these regulations, there are elements that are still the responsibility of SEPA and SNH. However, especially because the total number of agricultural schemes has been reduced, we believe that the number of farm inspections will be reduced. Of course, as there are 20,000 or so farms to be inspected, we will still have a substantial burden of inspection to carry out.

As I indicated in my answer to Alex Johnstone, we are anxious that multiple inspections do not take place on a repetitive basis. However, we still have to be absolutely sure that we cover a good sample across the board each year. It is important that the regulations are adhered to.

Richard Lochhead: Has there been any analysis of whether farmers will have to do less paperwork for cross-compliance than they had to do for the previous CAP schemes?

Ross Finnie: On aggregate, it is almost as if there must be less. Not so much on the cereal side perhaps, but on the livestock side, which makes up 48 per cent of Scotland's output and where five or six schemes are being replaced by the single farm payment, it is inevitable that the

number of forms that have to be filled out will be reduced. There will be one single farm payment form to complete, and I hope that we will move towards improving our ability to accept such forms online. We will continue to reduce the level of form filling per se and increase the ease by which that can be done. A substantial number of farmers will have far less form filling to do.

Rob Gibson (Highlands and Islands) (SNP): I welcome the minister's comments about the Freedom of Information (Scotland) Act 2002 and the money that farms receive as subsidies. In the past, there has been difficulty in accessing that information because we have been told that EU regulations made it impossible to divulge certain information. Has that now changed? At what intervals will we be told about the payments to farms? Can the minister confirm that the subsidies contained in a single farm payment could be more than £1 million and that such a payment may be made to one farm?

Ross Finnie: Several questions are raised in that. First, the historic position was that, under certain European regulations, information was almost equivalent to some of the information under the Data Protection Act 1998, so we were unable to release it. Secondly, the position has now altered, and we are not inhibited in our ability to implement in full the Freedom of Information (Scotland) Act 2002 in the same way. That said, I caution that, although the 2002 act allows for retrospective inspection, we are not entirely clear on the matter, because of the way in which the regulations are worded—indeed, our lawyers are wrestling with that problem. Although the relevant European regulation has been changed, we are not entirely convinced whether the effect is retrospective. Notwithstanding the fact that the 2002 act has only just been implemented, it is possible to go back in time with an FOI request, and to look into things such as payments. I am prepared to comply with requests about frequency and regularity.

I hope that, by the tone and tenor of his remarks, Mr Gibson is not suggesting that it is a bad thing per se that Scottish farms that have come together to be more effective and efficient in the marketplace are receiving larger single farm payments. Their size and holdings are above average and they are larger than most of our European competitors, but surely that is not a bad thing. Under the common agricultural policy, a farm must either justify or be justified in obtaining those payments. They receive them only if they meet the requirements of the scheme. To make inferences about the size of payments is unfortunate, particularly given the situation in Scotland, where farms are genuinely larger—indeed, the Executive has encouraged farms to join together to become larger units.

Although the environmental aspect is a big issue, an equally big issue is the need to have viable farming in Scotland. Without it, 65 to 75 per cent of the land mass would have no one looking after it, which would be equally undesirable.

Rob Gibson: We could debate whether large equals sustainable in the context of our earlier discussion. I was merely trying to emphasise that we are now able to gain access to information that could be misinterpreted by the public. I do not wish to misinterpret the facts about whether someone is receiving the appropriate amount of money. It was wrong of the minister to suggest that that was the inference behind what I said.

What is interesting for people is that they can now find out about the scheme. I hope that the minister will now answer the final part of my question about how often the information will be made available. Will that be done annually? The information would be helpful to the committee.

Ross Finnie: I have made it clear that we intend to comply with the Freedom of Information (Scotland) Act 2002. We have not yet come to a view on what is the most appropriate way in which to do that, as we have not been able to discuss the matter as yet with the relevant people. I made it absolutely clear that we will be fully FOI compliant in relation to agricultural subsidies.

The Convener: Okay. No member is indicating that they want to ask any further questions. We have covered quite a lot of ground. Are members content with the instrument and are they happy to make no recommendation to the Parliament?

Members indicated agreement.

Environmental Information (Scotland) Regulations 2004 (SSI 2004/520)

The Convener: We move on to consideration of the Environmental Information (Scotland) Regulations 2004. Once the officials have swapped places, we will commence our evidence taking on the instrument. The last couple of questions on information on subsidies under the new FOI regime demonstrated the little bit of crossover between the instruments.

I ask the minister to introduce his officials and to give the committee a brief opening statement about the regulations and how they will operate.

Ross Finnie: I have with me Andrew Mackie and Barry McCaffrey, who is on the legal side.

As members are aware, the regulations update for Scottish public authorities the European Union-based, UK-wide regime of 1992 on access to environmental information. The experience of the regime contributed to the information provisions of the United Nations Aarhus convention and to the subsequent European directive 2003/4/EC.

The regulations have four main goals. First, they continue the main themes of the previous regimes. For example, they retain the duty on authorities to provide information on request; the time limits for response; some exceptions from disclosure; the scope to charge fees; and duties on some private bodies. Secondly, they regulate and make mandatory matters that were previously addressed in good-practice guidance on the duty on authorities to provide advice and assistance, the scope to transfer requests and the active dissemination of available information. Thirdly, they reduce the time for responding from two months to, generally, one month, and they introduce a public interest test to the disclosure of information that could be withheld under an exception. Fourthly, they add formal enforcement measures through ministers' codes of practice and through the powers that were vested in the Scottish information commissioner under the Freedom of Information (Scotland) Act 2002.

Despite the separate legislative origins of the regulations in the UN and the European Union and of the UK and Scottish freedom of information regimes, ministers throughout the UK decided in 2003 that the implementation of the new environmental information regulations and the freedom of information legislation would be enhanced if the regimes were handled in tandem. We have achieved significant alignment between the two regimes in Scotland, which included the integration of material about the Environmental Information (Scotland) Regulations 2004 in awareness raising and training on freedom of information. Not all the features can be made to align; the freedom of information regime has developed along slightly different lines from the requirements that apply to EU member states, especially on the detail of exemptions and the charging of fees.

In short, the regulations provide a firm base for more detailed provisions, for better enforcement and for broad consistency with the Freedom of Information (Scotland) Act 2002, which has just come into force.

I commend the regulations to the committee.

The Convener: I invite members' questions or comments.

Mr Ruskell: I welcome the provision of more environmental information to us. However, an unintended side effect of the regulations might be the release of sensitive environmental information, such as information about the location of protected plant or bird species, which could lead to an increase in wildlife crime. Do the regulations contain provisions that ensure that such information will not be released? It would not be in the public interest for such information to be disclosed.

Ross Finnie: Many exemptions have been watered down or removed, but if you look carefully, you will find that exemptions still exist to deal with practical situations. We must consider the matter carefully. Although there is a general presumption in favour of disclosure in the regulations, we might also have to consider whether disclosure would be in the public interest. You asked about threatened species. I have carefully read my general notes, but perhaps Barry McCaffrey will guide you to the specific regulations that will help to answer your question.

Barry McCaffrey (Scottish Executive Legal and Parliamentary Services): There are grounds for the refusal of a request for disclosure. For example, regulation 10(5)(g) provides that a request may be refused if disclosure would be likely to prejudice substantially

“the protection of the environment to which the information relates.”

That would be subject to the public interest test. In the circumstance that Mark Ruskell flagged up, depending on the nature of the request, an assessment would have to be made of whether the exception would apply.

Mr Ruskell: Information should be withheld only in exceptional cases, but the situation that I described would clearly be one such case.

Ross Finnie: In a sense, the presumption is in favour of disclosure, and one is then required to make an argument as to whether there is an overriding public interest. If there is a threatened species, common sense would dictate that that would be brought within the mischief of the subparagraph to which Barry McCaffrey just referred.

Mr Ruskell: Absolutely.

12:15

The Convener: That is a helpful clarification, as it would be counterproductive to override one of the objectives of a previous act that we all supported. However, I take the point that the exemptions are crafted in such a way as to avoid information being withheld just because that is convenient. Information should be widely available to the public under the new regulations, and I think that we probably all welcome that.

I do not think that members have further comments, but we were keen to let you set out the principles behind the regulations, so that we could pick up on any points of clarification. Are members content with the instrument and happy to make no recommendation to the Parliament?

Members indicated agreement.

Waste (Scotland) Regulations 2005 (Draft)

The Convener: We have more subordinate legislation on our agenda. We are now considering the draft Waste (Scotland) Regulations 2005. Parliament must approve the draft instrument before it can formally be made, so we have before us a motion, in the name of Ross Finnie, inviting the committee to recommend to the Parliament that the instrument be approved. The minister will move that motion for us.

The Subordinate Legislation Committee has considered the instrument and made no comment. Before we come to the debate on the motion, it is our usual practice to allow members to ask for points of clarification or to ask questions about the instrument and how it will be put into effect, while we have officials at the table. Once we move on to the formal debate, we will not be able to ask the officials questions.

I ask the minister to introduce the officials and to make any opening remarks. I shall then move on to points of clarification or questions from members before we have the general debate. I know that one or two members have points that they want to raise.

Ross Finnie: Barry McCaffrey put his finger on the relevant subparagraph of that previous instrument so quickly that it seemed prudent to retain him. I am also joined by Charles Stewart Roper from the waste side of the Scottish Executive Environment and Rural Affairs Department, who is much more familiar with the detail of the regulations.

The draft regulations complete the process of extending the protections afforded by waste regulation to all forms of farm waste and non-mineral waste from mines and quarries. It seems entirely appropriate that the controlled waste regime be extended to cover those industries, as it does all other industrial sectors. We can all think of examples of waste from those industries that is environmentally dangerous as well as being a blight on our local amenity. However, there has been a big change for those affected, and the regulations make use of flexibility and European Community and Scots law to ease their transition.

As an example, I draw the committee's attention to the fact that it will still be permitted for farmers to burn non-hazardous waste in drum incinerators, under exemption. I know that there has been some speculation about that in the press and elsewhere, but there is no point in our banning a practice outright when there is no reasonable alternative, and we are not doing so.

I welcome the assistance given by NFU Scotland, the Scottish Rural Property and Business Association and the Crofters

Commission, which have helped in considering the many drafts of the regulations on behalf of land-based industries.

Extending the ambit of the controlled waste regime is not the only effect of the regulations. They address other aspects in which Scotland's practice falls below the best standards. For example, the draft regulations firm up the duty on householders to take care of how they dispose of their waste. They should ensure that they deal with their waste in a manner that does not cause harm to the environment or to human health, and should transfer waste only to proper persons. In most conceivable circumstances, that will mean the local authority. It might surprise some people to learn that householders are not already under such duties, and it is very much in keeping with our domestic drive against fly-tipping that such duties should be established, especially as much of what is fly-tipped in Scotland is household waste. There is no excuse for that.

The other major change that the draft regulations introduce will extend the separate regime for the protection of groundwater, hitherto provided in the Waste Management Licensing Regulations 1994, as amended. A systematic regime for dealing with threats to groundwater was established in the Groundwater Regulations 1998. There is no point in operating two separate systems.

On the effect of the draft regulations on various interested parties, I have mentioned that coming under the controlled waste regime will be a big change for farmers and mine and quarry operators. On the other hand, the change has already been made in relation to the burial and incineration of waste and in relation to hazardous waste. The outstanding changes will have relatively little effect. As I said, we are making the transition as easy as possible.

Local authorities have a major role to play in dealing with waste. The duties that we are placing on householders will encourage them to use the services that councils have a statutory duty to provide. Making agricultural waste into commercial waste will mean that farmers can strike a price with councils to remove their waste. That price must be reasonable for both parties. Provided that the waste is properly segregated—that is desirable in itself—councils should experience no adverse impact on their landfill allowances.

Our firm belief that the draft regulations will have relatively few financial implications is supported by the regulatory impact assessment that we commissioned from the independent consultants ERM. ERM says that our proposal will meet the requirements of the waste framework directive

“at a relatively low cost to the Executive, the regulator (SEPA) and the business sectors affected. It will also

minimise potential costs to human health and the environment caused by waste management.”

If approved, the draft regulations will make the relatively few outstanding changes that are necessary to complete the process of bringing Scotland's waste regime up to the best European standards. In England and Wales, the Department for Environment, Food and Rural Affairs published a consultation paper on 9 December 2004, which kicked off for those two countries the same process that we are completing. That is a tribute to the emphasis that the committee and the Scottish Parliament have given to handling waste.

I am happy to take questions.

Richard Lochhead: First, I apologise that I will have to leave the meeting in a few minutes.

I will ask the minister about the definition of waste and what is classified as exempt. Farmers have brought it to my attention that contracts are in place whereby some farmers recycle paper crumble from a local paper-mill by mixing it with manure on their fields, but that the waste exemptions cover only waste from paper-mills that is from virgin paper, rather than recycled paper. The regulations will—ironically—hit those farmers because they recycle recycled products, which means that the waste is classified as commercial rather than exempt. How do we influence what is classified as waste? How is waste defined?

I will also ask about the wider issue of definitions, given the recent case involving Scottish Water's recycling of sewage sludge pellets for use at Longannet. The minister will be aware that regulations are preventing that, which is causing serious problems because half the sewage sludge that is created in Scotland goes to Longannet.

Ross Finnie: Those are two entirely separate questions. The definitions of waste give rise to interpretation difficulties. In general, if anything that is designated as waste is not changed from being waste by a subsequent process, its next use must comply with the regulations.

Charles Stewart Roper (Scottish Executive Environment and Rural Affairs Department): We are obliged to use the European definition of waste, which is founded on the question whether something has been disposed of by some agent. The courts ultimately decide the detail of the definition of waste; whether a substance is waste is a judgment for them.

To be precise, the issue of exemptions—particularly for paper crumble—relates not to the draft regulations, but to the last set of amendments that were made to the Waste Management Licensing Regulations 1994, which altered many exemptions. Paper crumble that

comes from a recycling process involves an environmental risk, because it may be contaminated. That might not be true in any particular instance, but a general risk exists. The judgment is that that risk is significant enough to push that substance out of what can legitimately be spread on land under an exemption. In itself, that does not stop the activity because there are regulatory routes through licensing to accommodate it. The judgment is merely that the practice has sufficient risk to make it not legitimate to include it in the list of exemptions.

Ross Finnie: The second issue is slightly different, because it does not depend wholly on the definition of waste. Lord Reed's judgment has several elements to it. Scottish Power's principal case, which was that the residue was less harmful than had been argued by the Executive and SEPA, was not upheld by Lord Reed. He found that the waste that is used in the process as it currently operates was sufficiently hazardous for it not to be given an exemption.

A second complicating factor in that case is that there are processes that are capable of dealing with sewage sludge in a way that would not fall within the mischief of the regulations. I must be careful in what I say but—as I understand it—in Scottish Power's opinion the difficulty is that the investment required to get its process to meet the standard would not be justifiable, given its view of the general condition of the Longannet plant. That is a commercial decision for Scottish Power, but the company cannot say that it is not possible to have a system that would allow it to meet the regulations.

I agree that Lord Reed's decision makes difficult the question of how Scottish Water is to deal with sewage sludge, but there are a variety of land uses for it. I have been more relaxed about saying that since our introduction of more stringent regulation of handling sewage sludge. The fact that we have a stricter regulatory regime means that we have ample scope for sludge to be dealt with. In the longer term, I hope that someone will recognise the potential benefit of investing in the kind of energy production that takes place at Longannet. We must accept that Lord Reed's judgment was pretty clear. Scottish Power's case—that the waste that was used in that process was not so hazardous that it could not be granted an exemption—was not upheld in court. It is not for me to second-guess the courts.

Maureen Macmillan: Will you clarify the impact that the amended regulations will have on householders? What will be allowed and what will not be allowed by way of waste disposal within householders' curtilage? How will that be monitored? Will householders be informed about the new regulations?

The Convener: I presume that the regulations will apply to every householder in Scotland, because you said in your opening remarks that they would firm up the duty on us as individual householders.

Ross Finnie: That is right, but although householders will not be able to treat, keep or dispose of controlled waste in a manner that is likely to cause pollution, we do not believe that that obligation will necessarily be burdensome.

Maureen Macmillan made the point that we should co-ordinate our activity with that of local authorities to ensure that householders are aware of the new regulations. If the main way in which householders treat, keep or dispose of waste is through their local authority, it does not seem that they will be at significant risk. However, the committee and I know that there are many people who seek to dispose of waste in ways that do not involve their local authority.

However, some householders may believe that it is open to them to choose how to dispose of waste, and for them to do that would breach the regulations. We also have European obligations. At the end of the day, the regulations will not make much difference to the ordinary citizen because the vast majority of people deal with waste perfectly properly. However, as we all know, a number of citizens do not do so; we must bring them into line and ensure that they dispose of waste through their local authorities and in a way that does not breach the regulations.

12:30

Maureen Macmillan: Householders might burn rubbish at the bottom of their gardens, not realising that they are doing something that is outside the law. There is room for confusion about what people can and cannot do.

Ross Finnie: You have rightly put your finger on the essential remedy to that problem, which is the dissemination of information from the Executive to local authorities and from them to ordinary householders. There have always been inspection regimes and local environmental officers. We hope that a combination of those regimes and the work to clarify to ordinary householders their obligations will reduce significantly the small number of incidents that give rise to serious environmental damage in communities.

Mr Ruskell: The regulatory impact assessment had three options. You have chosen the second. You rightly rejected the third option, which was a complete revision of the waste regulations, but is there potential to revise the regulations in the future? If so, at what point will that be done?

Ross Finnie: I always see such potential. I share the general view that Mark Ruskell articulated in his first question on the first instrument that we considered today. When we have regulations we should try to get people to comply with them in the first instance and then assess how effective they are and ask whether we can raise the bar. The major reason for the present regulations is that, although only two industries were not controlled by the previous regime, their impact could, if not regulated, be damaging. We must assess how effective the waste management regime is and, on the basis of that assessment, perhaps seek to raise the bar. I do not disagree with Mark Ruskell that we must constantly try to improve, but we must do so in a way that brings people on side. We can regulate until we are blue in the face, but if we have hostile users, all we will get is people who seek to avoid following the law. We need to establish standards and to demonstrate what improvements have taken place. Assessment is required—we will continue to do that.

Mr Ruskell: My point is not really about raising the bar, but about looking for a win-win situation. The impact assessment states that, in the long run, complete revision of the regulations would reduce costs to businesses. Clearly, if we want businesses to recycle more, reducing costs is a good way forward. The question is about how we move the system forward. The minister has a latent interest in zero waste and, at some point, we will need to consider the regulations in order to reduce costs for businesses and increase our recycling, reuse and reduction. I am interested to hear more about that.

Ross Finnie: To be honest, I do not have a specific timescale, but we are moving towards a position of constant review. In the past, we tended to pass regulations and say, "That's okay. We've done that; tick the box." The department and I are genuinely concerned about measuring outcomes; we are not just interested in regulation, which was how we worked in the past. Now that we have regulation, we are much more concerned about measuring the outcomes. The further we go down that road, the more we will become aware of the need for further changes to regulations.

The Convener: Why do the courts, rather than the Scottish Executive or you as a minister, decide what is acceptable for various categories of waste? That is more of a philosophical question. I note that some of the definitions are quite politically charged and, as Charles Stewart Roper outlined earlier, they certainly have financial implications. Do you think that it is correct for the courts to decide what is regarded as waste, rather than the Scottish Executive?

Ross Finnie: As Barry McCaffrey said earlier, we always try to get a definition that will define the

Scottish position and at the same time comply with European regulations, but occasionally we are driven in our interpretation of such a regulation by the need to be quite clear that we keep within its ambit as laid down in the directive.

Barry McCaffrey: What is considered to be waste is very much driven by the waste framework directive, which starts off broadly by stating that waste is anything that it is intended will be discarded. For a number of years, the European Court of Justice has had to interpret that case by case and to decide whether something is being discarded as waste. It takes into account a range of circumstances, including the potential of the material to harm the environment. The classic example in the domestic context is Lord Reed's having to grapple with the circumstances in which dried sewage sludge was disposed of at Longannet; in that case, he had to consider all the circumstances. The key factor is whether the matter that is being discarded can harm the environment.

Ross Finnie: A European issue on which we are trying to take a view—we will continue to try—is the extent to which improved recovery techniques allow us to reconsider criteria for assessing whether material that has properly been defined as waste, but is processed, can be removed from the ambit of the waste regulations. There have been substantial technical improvements with which I am not sure the legislation has caught up. Perversely, if we continue to describe such material as waste and therefore require a licence to use the end product, that might militate against our having more techniques for reuse and recycling. That must be considered at European level.

The Convener: That is what my question was about. The environment is changing, given the options that might be available. We do not want to discourage technical ways of dealing with waste if they have wider environmental or social benefits. It is difficult to trade those things off, but we have to join the dots between different policies on recycling and waste management rather than have a narrow definition. Such a definition might strictly be correct in relation to what was desired when it was drafted, but we might now have a different view.

Ross Finnie: Absolutely—my department is pursuing that. I have a simple example that we resolved because there was a slight error in the information. There is a plant in Scotland that burns chicken litter for energy. One of its by-products is residue that is left after the heat treatment, which can be used as a fertiliser. That has been analysed and checked and there is nothing wrong with it, but it falls within the definition that the convener mentioned, so it is necessary—the

material having been designated as waste—to find a way out of its being so designated. If that is not done, the fertiliser would continue to be regarded as waste and no one could apply it to the land unless they had a waste licence. In this case, we found a way out, but it is an area of the law that requires examination. I do not want anything to stand in the way of reuse and recycling of materials.

The Convener: That was helpful. We have had all our questions clarified—

Rob Gibson: I still have a short question in relation to option 2, which mentions small additional costs for businesses to comply. Will SEPA have any costs that have not been mentioned so far?

Ross Finnie: From the information that we have, our general view is that the impact of the regulations will be to bring other bodies within their scope and that they will cover minor mineral wastes. We have consulted those bodies and do not think that the regulations will impose a burden on them that they are unable to manage. In some senses, consolidated regulation is helpful to such bodies because it means that they know what is brought within the mischief of the regulations. Having total coverage across the piece will be helpful, but there will be instances in which they will have to implement the regulations. However, we do not think that the regulations will have anything other than a fairly neutral effect.

Rob Gibson: I have a separate and small question on the previous subject, although I do not necessarily want to take up the committee's time at the moment. Richard Lochhead mentioned paper crumble from recycled paper. Can the minister come back to us in writing about whether an exemption could be extended to that area, or tell us how that would happen? It would be interesting to know that in the context of the minister's answer to the convener's question.

Ross Finnie: I will be happy to do that.

Motion moved,

That the Environment and Rural Development Committee recommends that the draft Waste (Scotland) Regulations 2005 be approved.—[*Ross Finnie.*]

Motion agreed to.

The Convener: I thank the minister and his officials.

Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 (SSI 2004/516)

Salmonella in Laying Flocks (Sampling Powers) (Scotland) Regulations 2004 (SSI 2004/536)

12:43

The Convener: The committee has two further instruments that are subject to the negative procedure to consider. The Subordinate Legislation Committee has considered the instruments and an extract of its report has been circulated to members. That committee commented only on the Salmonella in Laying Flocks (Sampling Powers) (Scotland) Regulations 2004.

Members will recall that we considered the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 before the recess and decided to seek clarification from the minister on a number of issues. The minister's response has been circulated to members. I am quite pleased by the minister's response; we asked many questions and the minister has answered them specifically. Are members also pleased with the minister's response?

Nora Radcliffe (Gordon) (LD): I marked "Good" in the margin of the letter.

The Convener: That is as good as it gets. I take it that we have no comments to make to Parliament and that the instrument can go through.

Alex Johnstone wanted to raise an issue about the Salmonella in Laying Flocks (Sampling Powers) (Scotland) Regulations 2004.

Alex Johnstone: It is daring of any politician, particularly a Conservative politician, to make a comment on salmonella in laying flocks, but I appeal for the sins of the father not to be visited on the son—although in this case, the father is more like a wicked auntie, if you know what I mean.

The Convener: We know what you mean.

12:45

Alex Johnstone: I do not intend to oppose the regulations—I support them—but they raise an issue that has been mentioned to me. I wonder whether we could take it up in writing.

The poultry industry in this country, and particularly the egg industry, is subject to competition that extends well beyond the European Union. I am concerned that we are implementing a process that might lead ultimately

to regulation of laying flocks in Britain and Europe, which will give rise to significant and serious competition issues in respect of eggs that are imported from outside the European Union, and consequently could result in our simply exporting our industry to areas where standards are not as high as those in this country.

I wish, through the committee, to inquire of the relevant organisations whether it is intended that a parallel course will be taken to guarantee that inferior or substandard products from outside the European Union will not be allowed to compete with the higher-standard products that are produced within the European Union, and whether that would comply with international regulations. If it would not, is it intended to introduce adequate and appropriate labelling so that people understand the quality of the product that is being produced within Scotland and the European Union, and understand that it is superior in health terms to foreign imported products?

The Convener: You have agreement from Karen Gillon. It would be useful to clarify those points with ministers. I am conscious that the labelling we now have on eggs lets the consumer decide what kind of eggs to buy according to organic standards, animal welfare standards or whatever, which is great from our perspective. You are not suggesting that we do not pass the instrument?

Alex Johnstone: No.

The Convener: I would be happy for the committee to write to the minister for clarification. That would be useful. Nobody is concerned about our passing the instrument, but we will get that extra information. Are members content?

Members *indicated agreement.*

The Convener: We have clarified that we are content with the instruments and are happy to make no recommendations to Parliament.

Meeting closed at 12:47.

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