



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 13 March 2019

Session 5



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Pàrlamaid na h-Alba

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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

9th Meeting 2019, Session 5

CONVENER

*Edward Mountain (Highlands and Islands) (Con)

DEPUTY CONVENER

*Gail Ross (Caithness, Sutherland and Ross) (SNP)

COMMITTEE MEMBERS

*Peter Chapman (North East Scotland) (Con)

*John Finnie (Highlands and Islands) (Green)

*Jamie Greene (West Scotland) (Con)

*Richard Lyle (Uddingston and Bellshill) (SNP)

*John Mason (Glasgow Shettleston) (SNP)

*Mike Rumbles (North East Scotland) (LD)

*Colin Smyth (South Scotland) (Lab)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lindsay Anderson (Scottish Government)

Fergus Ewing (Cabinet Secretary for the Rural Economy)

Gail Rogerson (Scottish Government)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 13 March 2019

[The Convener opened the meeting at 10:01]

European Union (Withdrawal) Act 2018

Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/59)

Genetically Modified Organisms (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/57)

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Agriculture Market Measures (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/73)

The Convener (Edward Mountain): Good morning, and welcome to the ninth meeting in 2019 of the Rural Economy and Connectivity Committee. I ask everyone to ensure that their mobile phones are on silent.

Agenda item 1 is a sift of six Brexit-related instruments, as detailed on the agenda. The Scottish Government has allocated the negative procedure to the instruments. Is the committee content with the parliamentary procedure that has been allocated to these instruments by the Scottish Government?

Members *indicated agreement.*

Subordinate Legislation

Plant Health (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [Draft]

Forestry (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [Draft]

10:02

The Convener: Item 2 is consideration of two affirmative instruments—one on plant health and one on forestry regulations. The committee will take evidence from the Cabinet Secretary for the Rural Economy. The motion seeking the approval of the instruments will be considered under items 3 and 4. Members should note that there have been no representations to the committee on these instruments.

I welcome Fergus Ewing, the cabinet secretary; John Speirs, a senior policy adviser in the Scottish Government; Stewart Snape, the European Union exit manager at Forestry Commission Scotland; and Lindsay Anderson and Elizabeth Rutherford, who are solicitors in the Scottish Government.

I invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for the Rural Economy (Fergus Ewing): Thank you for making time to consider the two sets of regulations. I ask that the Rural Economy and Connectivity Committee recommend that both instruments be approved.

The primary purpose of the instruments is to correct the deficiencies in domestic legislation dealing with the protection of plants and plant products, the marketing of forest reproductive material and the governance of environmental impact assessment. The changes will be necessary should we leave the EU without a deal, and they are aimed at minimising disruption to trade.

Currently, Scotland operates under a regime that gives effect to the EU plant health, forest reproductive material and environmental impact assessment directives, which are implemented in Scotland through various plant health and forestry legislation. The directives set out controls on the import and movement of plant and FRM material into and around the EU, as well as on the governance of forestry-related developments.

The SSIs update existing implementing legislation to ensure that it can operate effectively if the UK leaves the EU without a deal. The changes that the instruments will make are largely technical—for example, amending the designation of the EU “protected zones” in the UK to the

international designation of “pest-free areas”, ensuring that EU goods will be accompanied by phytosanitary certificates rather than EU plant passports and creating new offences.

To respect devolution and Scottish Government competency, the regulations will apply to Scotland only. Similar regulations apply to England, Wales and Northern Ireland. Together, they provide UK-wide arrangements for pests and diseases, which do not respect borders.

Regrettably, the plant health regulations had to be withdrawn and re-laid due to a minor technical error. The change was made quickly and there was no disruption to the original instrument's scheduled date.

A robust import regime is key to protecting plant and tree health. The instruments define the EU as a third country but do not prescribe that phytosanitary checks be performed on all EU imports. The need for physical checks will be assessed according to the risk of the particular import. As the phytosanitary risk will not have changed on day 1, it is considered that the draft regulations are a proportionate, risk-based response designed to maintain the current inspection regime and to minimise any disruption to trade in the event of a no-deal exit.

The Convener: Do members have any questions?

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a couple of technical, legal-ish questions for the cabinet secretary, which are about timing.

The advice that we have on the plant health regulations suggests that they will come into force prior to 11 pm on 29 March regardless of what the exit date turns out to be—it is currently 29 March. I want it on the record that there will be no adverse effects if the regulations come into operation before exit day, even if that is a short period. I note what the cabinet secretary said in his introductory remarks about the instruments defining the EU as a third country. Clearly, if exit day is delayed and the regulations come into force on 29 March, there will be a period during which the UK is in the EU but has a piece of legislation that defines the EU as a third country.

Similarly—I will do this in a oner—the draft of the forestry regulations has them coming into force on 1 April 2019. Therefore, there would appear to be a one-hour lacuna between the UK leaving the EU at 11 pm and the regulations coming into force. Again, this is just an opportunity to put on the record whether there is any legal concern about that. I expect that you will say that that is all very interesting but none of it matters. On the other hand, I might hear something different from you.

Fergus Ewing: I freely confess that I have not dwelt on that scenario overly. However, we have our legal advisers here, so perhaps Lindsay Anderson might be able to help out.

Lindsay Anderson (Scottish Government): The timing for the forestry instrument is slightly different because of the project to implement the package of measures to devolve forestry—which, as you know, the next agenda item relates to. We wanted to ensure that, in the event that the Brexit legislation had to come into force in the event of a disorderly exit from the EU, it would, nonetheless, still mesh with that implementation project.

In the event that 29 March comes and goes and we have not left the EU, we anticipate that exit day will be moved by amendment to the enabling powers. The act that we used to make the instruments—the European Union (Withdrawal) Act 2018—has a definition of exit day, and we anticipate that that would be amended at Westminster so that the definition was no longer 29 March but another date. The way in which these and other EU exit-related instruments are drafted ensures that they will mesh with that anticipated amendment.

The instruments will come into force on exit day, whenever exit day occurs. At the moment, that is 29 March but, clearly, that might change.

Stewart Stevenson: To be clear, they will come into effect at 23:00 Greenwich mean time.

Lindsay Anderson: Yes.

The Convener: Does anyone else have a question?

Jamie Greene (West Scotland) (Con): I did not have a question, but I have one now, given the response that we have just heard—thank you, Stewart.

The instruments are required to correct deficiencies in domestic legislation after exit day. Can you tell me whether the issue of whether there is a deal or not is relevant? I presume that any deal would be relevant, because it would relate specifically to trading relationships as opposed to the jurisdiction of EU legislation. In other words, if there were an exit with a deal, would that mean that this legislation would no longer be required because, by default, the existing EU directives would be applicable under the terms of the deal? Does that make sense?

Lindsay Anderson: I think that makes sense. The instruments are drafted purely to take care of the possibility of the UK leaving without a deal. They are, as it were, no-deal exit SSIs. In the event that there is a deal, we anticipate that more legislation will be passed at Westminster that will give effect to whatever that deal looks like.

Obviously, if I could predict more than that, I would have another job.

Further legislation will be required. The Scottish Government's position has been that a number of SSIs needed to be made in order to mitigate the worst or most damaging deficiencies that would arise in the event of a no-deal Brexit. The instruments before us today deal only with a no-deal situation; we cannot deal with the implementation of something the shape or content of which we do not yet know.

Jamie Greene: That is very helpful. Thank you.

The Convener: Cabinet secretary, do you wish to make any closing remarks?

Fergus Ewing: No, thank you, convener.

The Convener: Item 3 is the formal consideration of motion S5M-15963.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Plant Health (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [draft] be approved.—
[*Fergus Ewing*]

Motion agreed to.

The Convener: We will now pause—
[*Interruption.*] No, I am told that we will move to item 4 and then pause.

Mike Rumbles (North East Scotland) (LD): I think that what has happened is that the agenda has the instruments the other way around.

The Convener: I mentioned earlier that the agenda had changed. The new agenda was issued yesterday.

Richard Lyle (Uddingston and Bellshill) (SNP): I never saw it.

The Convener: We can sort this out afterwards, because the procedure is the same; the instruments are just in a different order. I apologise for any confusion.

Item 4 is the formal consideration of motion S5M-15962.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Forestry (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [draft] be approved.—
[*Fergus Ewing*]

Motion agreed to.

The Convener: We will now have a brief pause to allow a change of witnesses.

10:14

Meeting suspended.

10:16

On resuming—

Forestry (Exemptions) (Scotland) Regulations 2019 [Draft]

Forestry and Land Management (Scotland) Act 2018 (Consequential Amendments) Regulations 2019 [Draft]

The Convener: The next item is consideration of subordinate legislation on forestry exemptions and land management. The instruments, as detailed on the agenda, are subject to affirmative procedure. The committee will take evidence from the Cabinet Secretary for the Rural Economy. The motions seek the committee's approval of the instruments. Members should note that no representations have been made to the committee on the instruments.

I welcome, again, Fergus Ewing, the cabinet secretary; Catherine Murdoch of the forestry devolution team; Gail Rogerson, who is a forestry legislation development officer; and Lindsay Anderson and Morven Davidson, who are both solicitors for the Scottish Government.

I ask the cabinet secretary to make a brief opening statement.

Fergus Ewing: Thank you for inviting me to the committee's consideration of the two forestry instruments.

Motions S5M-15923 and S5M-15922 ask the committee to recommend that the regulations be approved. The Forestry (Exemptions) (Scotland) Regulations 2019 and the Forestry and Land Management (Scotland) Act 2018 (Consequential Amendments) Regulations 2019 are part of a package of instruments that bring into force the Forestry and Land Management (Scotland) Act 2018. The act completes devolution of responsibility for forestry to Scotland by transferring to Scottish ministers responsibility for functions that relate to Scotland that are currently carried out by the Forestry Commission. That will happen on 1 April, which is why the instruments will come into force on that date.

The package of secondary legislation puts in place supporting detail on how forestry will be regulated from April onwards, and deals with transfer of property and liabilities from the Forestry Commission to Scottish ministers. The first instrument sets out the felling activities that can be carried out without specific felling permission from the regulator, which are generally referred to as "exemptions", and the second makes amendments to primary legislation that are required as a consequence of the 2018 act. The instruments are

technical, and aim principally to maintain the status quo, as we commence the act.

We have taken a consultative approach to developing the instruments and a pragmatic approach to transition from one regime to the other. The aim is to ensure a smooth transition for the sector by, for example, basing future exemptions on those that are currently in place. We have, however, made necessary changes resulting from the primary legislation, and where there has been widespread support for an improvement.

I hope that that summary is helpful. I am happy, with my officials, to answer your questions.

The Convener: I have a question to clarify a point on felling. Before I do so, I refer the cabinet secretary and committee members to my entry in the register of member's interests in respect of a farming partnership that has some trees. The Forestry (Exemptions) (Scotland) Regulations 2019 section 4(j), on elm trees and Dutch elm disease, says that once

"the greater part of the crown of the tree is dead",

the tree may be felled. Why was it decided to include just Dutch elm disease and not other diseases, such as ash dieback, which you will know all about?

Fergus Ewing: I have some knowledge of the matter and asked officials the same question. The reason is that an exemption for Dutch elm disease currently exists. I set out in my opening remarks that the main element of the approach was to secure continuity and to make changes only where there is a demonstrable need to do so, either because of the act or where there could be clear improvements. The exemption currently exists, and no firm arguments have been presented to change it. Our intention has been to maintain the status quo unless there is a strong argument to do otherwise, so we set out to maintain the exemption. Officials might have more to say, or additional information that our stakeholders provided in the consultation.

Gail Rogerson (Scottish Government): We got very few comments on the matter in stakeholder engagement and consultation: no reason was given to remove the exemption. If we were to exempt other diseases, we would have to list them in the regulations, but there are no other diseases or tree species for which we want exemptions. Other diseases, including phytophthora ramorum and chalarra fraxinea, which attacks ash, can be dealt with through plant health legislation rather than a full-scale exemption in the regulations.

The Convener: I understand that. There is, however, concern—the cabinet secretary will know

this from driving round the Highlands—about the amount of Dutch elm disease at the edge of roads and so on, and the danger to the public from falling trees. That could also happen with ash trees, so I want to make sure that sufficient thought has been given to ensuring that there will be no problems with felling of ash trees, should ash dieback become a problem.

Gail Rogerson: There is an exemption for trees that are completely dead. A completely dead ash tree can be felled, under the exemption.

The Convener: Thank you for that clarification. No one else has questions, and the cabinet secretary does not wish to make any closing remarks, so we move to item 6, which is formal consideration of motion S5M-15923.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Forestry (Exemptions) (Scotland) Regulations 2019 [draft] be approved.—[*Fergus Ewing*]

Motion agreed to.

The Convener: Item 7 is formal consideration of motion S5M-15922. I invite the cabinet secretary to move the motion and make any further comments.

Fergus Ewing: I have no comments, other than to say that it appears that all the hours that I spent preparing for the meeting were in vain. That is life.

The Convener: I am sure that committee members welcome the cabinet secretary's diligence in preparing for coming before them.

Motion moved,

That the Rural Economy and Connectivity Committee recommends that the Forestry and Land Management (Scotland) Act 2018 (Consequential Amendments) Regulations 2019 [draft] be approved.

Motion agreed to.

The Convener: I thank the cabinet secretary and his officials for attending the meeting and for the hours of preparation that the cabinet secretary put in.

Felling (Scotland) Regulations 2019 (SSI 2019/49)

Scotland Act 1998 (Specification of Functions and Transfer of Property etc) Order 2019 (SSI 2019/183)

Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/59)

Genetically Modified Organisms (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/57)

Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/60)

Fisheries (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 (SSI 2019/69)

Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/71)

Agriculture Market Measures (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/73)

10:24

The Convener: Item 8 is consideration of eight instruments that are subject to negative procedure.

No motions to annul have been lodged and no representations have been received on the instruments. Does the committee agree to make no recommendations on the instruments?

Members *indicated agreement.*

European Union (Withdrawal) Act 2018

Common Fisheries Policy (Amendment etc) (EU Exit) (No 2) Regulations 2019

10:24

The Convener: Item 9 is on an instrument that has been laid in the United Kingdom Parliament under the European Union (Withdrawal) Act 2018. We have received a consent notification on this UK statutory instrument, which covers the common fisheries policy, fishing opportunities and discard plans. Are there any comments?

Stewart Stevenson: Fergus Ewing's letter to you states:

"we are yet to have sight of the final version of the Regulations and it is not available in the public domain at this stage."

Do we have an update? Perhaps the clerks know something.

I do not doubt anybody's good faith. The two Governments are working closely together on this matter, so I am quite content at that level, but it is appropriate to put on the record my residual concern that part of what we are considering is not yet available to us. I hope that the final version of the regulations is available in the public domain very soon.

The Convener: We could write to the Scottish Government to confirm that the committee is content for consent to be given for the instrument, but also to ask that the Scottish Government notifies us as soon as the missing piece of the jigsaw is received, so that we can look at it. Is that how the committee wishes to proceed? Do we agree to write to the Scottish Government to confirm that we are content, subject to our receiving the further information as requested—

Stewart Stevenson: Forgive me, convener—I was not suggesting that we make our consent subject to our receiving that further information, but that we should receive it for the purposes of clarity.

The Convener: I was about to say that we could consent to the instrument but ask for the information to be provided. Is that agreed?

Members *indicated agreement.*

The Convener: That concludes this morning's business.

Meeting closed at 10:27.

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