



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Economy and Connectivity Committee

Wednesday 1 May 2019

Session 5



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RURAL ECONOMY AND CONNECTIVITY COMMITTEE

14th 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

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Rural Economy and Connectivity Committee

Wednesday 1 May 2019

[The Convener opened the meeting at 09:32]

Decision on Taking Business in Private

The Convener (Edward Mountain): I welcome everyone to the 14th meeting in 2019 of the Rural Economy and Connectivity Committee. I ask people to ensure that their mobile phones are on silent.

Agenda item 1 is to consider taking item 3 in private to allow the committee to discuss its response to a letter from the Finance and Constitution Committee on European Union withdrawal-related scrutiny. I believe that Mike Rumbles has a comment.

Mike Rumbles (North East Scotland) (LD): I am not sure that it is appropriate to go into private session on this occasion, because the seven-page letter from the Finance and Constitution Committee is already in the public domain and all that we are being asked to do is to suggest some general principles of effective scrutiny to that committee rather than provide detailed responses to each question asked. Given that we are, quite correctly, considering the stage 1 report on the Restricted Roads (20 mph Speed Limit) (Scotland) Bill in private, considering item 3 in private would skew our business to an extent. I therefore suggest that we consider item 3 in public.

Richard Lyle (Uddingston and Bellshill) (SNP): I agree with Mike Rumbles on this occasion. Item 3 is about scrutiny relating to withdrawal from the EU, which I think should be discussed in public.

The Convener: On the basis that two committee members have spoken in favour of considering agenda item 3 in public and no member has spoken against that suggestion, does the committee agree that we should consider item 3 in public? It seems reasonable to me, from a transparency point of view, that people can see what the committee is doing and what our views are on that subject. Is that agreed?

Members indicated agreement.

Subordinate Legislation

Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2019 (SSI 2019/118)

09:34

The Convener: Item 2 is consideration of a negative Scottish statutory instrument: the Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2019. No motions to annul or representations have been received in relation to the instrument. I believe that Stewart Stevenson has something to say on it, though.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am fully supportive of the instrument and do not wish to stand in its way. However, I have identified that there are 14 references—I might have missed others—to various pieces of European Union legislation in the regulations before us. I would like the Government to assure us that it is keeping the regulations on its list of things that will have to be changed if and when the United Kingdom leaves the EU. It is worth making the point that the regulations were made on 26 March, three days before the original departure day but, nonetheless, they have those 14 references. I do not want to change anything that the instrument does, but I make that general point.

Peter Chapman (North East Scotland) (Con): I apologise for not saying so earlier, but I declare an interest as a partner in a farming business.

New paragraph 19 of the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010 relates to determining the age of sheep and goats. There was a proposal that, rather than determining whether a lamb is more than a year old by way of dentition—as we have done in the past—after 30 June each year, all lambs would be considered to be a year old. I know that the industry was keen for that provision to be introduced, because it would mean that it would be much simpler to determine when a lamb is a year old, which is important in relation to splitting the carcase and taking out specified risk material. Paragraph 19 states that the method of ageing will be

“approved by the Scottish Ministers.”

I pretty much know that the United Kingdom Government has decided not to go down the road that has been proposed, although the industry would love it to do so. Will there be different regimes north and south of the border? Could we ask that question?

The Convener: I declare that I have an interest as a farmer, although I am only responding to the comments that have been made by committee members. As no one else has any comments, I propose that the committee writes to the Government to ask the questions that have been raised by Stewart Stevenson regarding EU legislation. It would also be helpful if the clerks wrote on behalf of the committee to the Government to ask for its position on how the age of lambs and sheep will be determined.

No members have spoken against the instrument, so I think that our general feeling is that there are no recommendations, other than that we write to the Government as I suggested. Is that the committee's view?

Members *indicated agreement.*

European Union Withdrawal-related Scrutiny

09:37

The Convener: Item 3 is EU withdrawal-related scrutiny. The Finance and Constitution Committee has invited other committees to provide their views on the Scottish Parliament's scrutiny role in relation to the new powers that would arise from the UK's withdrawal from the EU.

This item is to consider how the Rural Economy and Connectivity Committee could respond to the letter and the options that are set out in meeting paper 2. I ask for the committee's view on whether and how to respond to the Finance and Constitution Committee in relation to three areas—the UK Government making regulations in certain devolved areas; international trade treaties; and common UK frameworks—and whether there are any other issues that we wish to highlight.

There are suggestions on how to respond in the paper and I invite comments from committee members.

John Finnie (Highlands and Islands) (Green):

It is a helpful paper. Given Mr Chapman's earlier comments, and the fact that the movement of and trade in livestock are international, in response to the question that is posed in paragraph 12 of the paper, I am clear that the Scottish Parliament should have a role in scrutinising the impact of future international trade treaties on devolved areas. In fact, I think that it would be entirely remiss if we did not. I would like that point to be stressed.

Stewart Stevenson: There are three references in the paper to that subject, which is exactly what I want to address. The Finance and Constitution Committee says that it would welcome our view on whether

"As a matter of principle, the Scottish Parliament, as a minimum, must be consulted prior to consent being given by Scottish Ministers"

to UK ministers exercising powers to legislate in devolved areas. That is something that I would absolutely support as a minimum. I would go further and say that there are some precedents of which I am aware—and I am sure that there will be others of which I am unaware—for co-decision making among the jurisdictions in the British isles.

A particular example, and I accept that it is a small point, is that there has to be unanimity when appointments are made to the UK Climate Change Committee. As a minister, I had to deal with circumstances in which there was not unanimity initially, although we got to unanimity. There are also some cross-border institutions that require

sign-off north and south of the border. The British Waterways Board is one example. When I was a minister, I found myself having to authorise the sale of land in Birmingham. I did not think that that was a particularly useful thing for me to be doing, but that was how it worked.

I will just leave my other comment sticking to the wall. Although I have a much simpler approach to the issue, which I will not rehearse for members, in matters relating to the interests of the various Parliaments and Assemblies in these islands, perhaps—and this is not unduly controversial—there is a case for reform in the way things are done at Westminster. It might be time to visit the subject of joint committees between the various Parliaments when they are talking about issues of joint interest.

It is all very well Governments having ministerial committees that allow ministers to liaise but, bluntly, some of that liaison is really about parliamentarians and Parliament, and that touches on this same subject as a possible way we could deal with it.

The Convener: We have to be careful, because we are talking about the letter on EU withdrawal-related scrutiny and what you have said might go beyond that.

Richard Lyle: The Finance and Constitution Committee has asked for our views on the options that are in the paper. I agree that the Finance and Constitution Committee should consider extending its scope to cover all relevant future UK legislation. I agree that the Scottish Parliament should have a role in scrutinising the impact of future international treaties on devolved areas—if we are going to come out of the EU, we should be consulted. I also agree with what is said in the paper about common frameworks and believe that we should be involved.

John Mason (Glasgow Shettleston) (SNP): This issue also came up at the Economy, Energy and Fair Work Committee yesterday, when we took evidence from the Cabinet Secretary for Finance, Economy and Fair Work, Derek Mackay.

In an ideal world, there should be parliamentary scrutiny of what both Governments are doing. The reality is that the relationship between them has varied from being good to not so good, and that makes things difficult in practice. There was a case in which John Swinney, when he was finance secretary, disagreed with what was being said down south about an adjustment to the block grant, and they had a phone call and they split the difference. It is difficult for any committee to scrutinise that kind of decision.

The point was also made that different UK Government departments vary in how co-operative and open they are.

Another point that was made yesterday, and one that I agree with, is that there needs to be a framework for framework agreements, and that falls within Michael Russell's remit, whereas individual cabinet secretaries and ministers will deal with particular departments.

Mike Rumbles: Our job as parliamentarians is to scrutinise the Scottish Government's actions. That is our role, and that is what we should focus on.

On the specific questions about the three areas in the paper, paragraph 11 is a bit too harsh. It says that there should be

"a statutory requirement that new trade agreements ... must be agreed by the Scottish Government and Scottish Parliament."

That looks like a veto on reserved matters, so I do not think that it is appropriate. It is appropriate that we establish between the Scottish Government and the UK Government a protocol for how to work through the process, because we have a mix of reserved matters and devolved matters. If we start to demand that we should have a veto on this or a veto on that, it will not help in getting agreement between the UK Government and the Scottish Government in practical terms.

09:45

Jamie Greene (West Scotland) (Con): On page 4 of the letter from the Finance and Constitution Committee, the last bullet point asks

"what process should be in place to enable the Scottish Parliament to scrutinise all UK legislation which confers powers on UK Ministers"

and says that

"The protocol which applies to the EU (Withdrawal) Act may be a starting point in that consideration."

I am unclear about which protocol we are being asked to consider—I presume that it relates to the Westminster European Union (Withdrawal) Act 2018 and not to the bill that the Scottish Parliament passed. The act is detailed and lengthy, so it would be helpful to have bullet points about the protocol that would help us to consider whether the suggestion is appropriate.

The Convener: I think that the reference is to the protocol that the Scottish Parliament agreed to on the classification of statutory instruments. I ask the clerk to clarify that.

Steve Farrell (Clerk): We have operated the protocol in relation to UK SI consent notifications, which members will be familiar with. That might be a useful starting point for looking, beyond withdrawal, at how we manage future SIs. Perhaps we can build on the existing protocol to develop a similar protocol for handling them.

Jamie Greene: That assumes that this committee and other committees are content with the process as it stands. The feedback from the other committee that I sit on and from other members I speak to is about the volume of SIs that are coming through—I raised that with Mike Russell last week at the Culture, Tourism, Europe and External Affairs Committee meeting, when it was accepted that the time factors and the volume give us little room for proper scrutiny of SIs. Using the protocol as a starting point is one thing, but whether the protocol is working for Parliament is entirely another. I do not know whether other members wish to comment on that before I move on to my next point.

The Convener: I know that you have another point.

Stewart Stevenson: I have a small point. When UK SIs come before us, our processes mean that they have not gone to the Delegated Powers and Law Reform Committee, unlike everything else. There are various options for going forward, on which I do not take a definitive view.

Jamie Greene: In its letter, the Finance and Constitution Committee also asks for our views on the Parliament's role in scrutinising the impact of future international treaties—it does not ask us for direct input into the negotiation of treaties—and that is a fair ask. When future treaties relate to this committee's competences, such as fisheries and agriculture, it will be entirely appropriate for us to consider them, although our output and influence on negotiations will be another matter. We need only look at the EU and Canada deal, which faced a number of difficulties in 2016 in its sign-off processes—for example, in Wallonia—perhaps because of a lack of clarity about the role that Parliaments in member states play in the negotiation of treaties. There is an important discussion to have about the Scottish Parliament's role, although some might say that the negotiation of treaties is a reserved matter.

On common frameworks, what has come up time after time is the discussion about whether the Scottish Government could or should create divergent policies in areas of disagreement between the UK and Scottish Governments. It is fair to say that, in the buckets of responsibilities, there will inevitably be disagreements about whether something is devolved or reserved as it is transposed from the EU back to these islands. The committee's job is to scrutinise the Scottish Government's approach to such policy matters, with a view to avoiding divergent policies, while respecting the fact that each constituent part of the UK might have different needs.

John Finnie: The debate thus far has been very good and has illustrated that we all know one another's positions on the constitutional question

and all accept the procedure for what would be ruled as being reserved. I chose my words very carefully when I said that we should have a role, and the reason for that is that, as paragraph 9 says,

"The UK Government has committed to establishing a formal mechanism for UK and devolved government ministers to discuss and provide input to future trade negotiations."

By default, if we scrutinise the minister who has input, we are having a say in that input. Last week, for instance, the Cabinet Secretary for Rural Economy talked about the disastrous effect on our lamb industry of World Trade Organization tariffs in the event of a no deal. It is on such areas that I think we are all agreed. It would be disappointing if we got hooked up on some of the constitutional issues, because it seems that the UK Government is committed to hearing views, as the paper says. It is important that we scrutinise the input from ministers.

The Convener: No one else has any comments, but I have a general comment. As convener, I see all the paperwork that comes through that relates to the various instruments and legislative consent memorandums that we have to consider. I have made this point before—I can see the clerks saying, "He is going to say that again," and I am—about the amount of paperwork that we get and its clarity. I would like the committee to ask for the papers for scrutiny to be laid out in such a way that they are easily readable. In some bill stages, the paperwork exceeds the legislation by multiples of 10 per page, which is unhelpful. I have sometimes found it very difficult, even with my experience in land management, to understand what land management process is being put forward in legislation.

I would like the committee to consider a simplification of the paperwork process to allow our scrutiny to be done more effectively. This committee has done more instruments than any other apart from the Delegated Powers and Law Reform Committee, which has considered them all. We have had more than our fair share and some of the paperwork has been massive, as members know.

I propose that we ask the clerks to draft a response that is based on what we have heard today. It should be quite focused and I am pleased that John Finnie has made the point that it should focus on the process of scrutiny and not get hung up on constitutional issues, because the issue is how to make that process effective. I propose that the clerks circulate the draft with the papers for a future meeting, within the guidelines. I will not tie them down, because we have quite a lot on, but I will find out what would be an appropriate moment to have it ready.

If no one has any comments on that, I propose that we move to agenda item 4, and move the meeting into private.

09:53

Meeting continued in private until 12:33.

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