



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 16 March 2021

Session 5



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Pàrlamaid na h-Alba

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ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
11th Meeting 2021, Session 5

CONVENER

*Gillian Martin (Aberdeenshire East) (SNP)

DEPUTY CONVENER

*Finlay Carson (Galloway and West Dumfries) (Con)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Angus MacDonald (Falkirk East) (SNP)

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

*Liz Smith (Mid Scotland and Fife) (Con)

Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jesus Gallego (Scottish Government)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Virtual Meeting

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 16 March 2021

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Gillian Martin): Good morning. Welcome to the 11th meeting of the Environment, Climate Change and Land Reform Committee in 2021. We anticipate this being our last meeting of the parliamentary session. We have apologies from Stewart Stevenson.

Agenda item 1 is a decision to take items 5 and 6 in private. Do we agree to do so?

I see that members agree, so we will take items 5 and 6 in private.

European Union (Withdrawal) Act 2018

Exemptions from the Official Controls at Border Control Posts (Amendment) Regulations 2021

09:00

The Convener: Agenda item 2 is an evidence session on a United Kingdom statutory instrument. Members will be aware that a revised SI protocol has been agreed between the Scottish Government and the Scottish Parliament. The aim of the revised protocol is to enable committees to scrutinise Scottish Government proposals to consent to UK SIs on all devolved matters formerly governed by European Union law. The original SI protocol applied only to scrutiny of the Scottish Government's proposals to consent to SIs that fixed deficiencies under the European Union (Withdrawal) Act 2018. Our new SI protocol continues to apply to those technical changes and ensure continuity of law, but also extends to proposals to consent to SIs that introduce new regulatory or governance regimes, or implement policy choices.

The committee received notification of this SI only last week, and members have some questions. To help us with those we have with us Jesus Gallego, deputy director of agriculture and rural economy in the EU exit unit and deputy chief veterinary officer. Good morning, Mr Gallego.

We will move straight to questions. Could you outline why there is a need for urgency and what is behind the late notice of the SI?

Jesus Gallego (Scottish Government): It is purely to follow the UK Parliament's timetable. We received the instrument late, and we made it available to the committee as soon as we had it. Unfortunately, that was only 10 days before the laying date.

The Convener: The issue is process, rather than anything that might have a practical consequence if it was not done. It is because dissolution is imminent.

Jesus Gallego: That is absolutely right. It is purely a process matter.

The Convener: Other members may have questions.

Mark Ruskell (Mid Scotland and Fife) (Green): From your perspective, is the protocol working?

Jesus Gallego: We have had repeated problems with adhering to the timetable for notifications, because of the lateness of

notifications from the Department for Environment, Food and Rural Affairs, which is responsible for the majority of the SIs that we in the agriculture and rural environment part of my unit are involved in. As you will be well aware, this is not an isolated incident. The situation is frustrating for everyone, and I know that it is frustrating for the committee. We have done our best to give the committee as much notice as we can, but the timing of these instruments depends on the UK Government.

Mark Ruskell: It is concerning and it is frustrating.

I have a question about the detail of the change in border controls for animals that are to be tested on. What are the practical changes as a result of the SI? Does it mean that instead of having vets at border controls there are vets at facilities that are doing animal testing?

Jesus Gallego: In practice, there is little impact. For animals that, before the end of the transition period, were coming from the European Union, there is no change at all, because they never had to go through a border control post; they went straight to the approved laboratory premises.

For third-country animals—there are not many—that come into UK and Scottish establishments, because those establishments are approved and operate under a biosecurity regime that was in place before the end of the transition period and continues to be in place, there is in practice a very low impact on animal health. Such facilities operate under official supervision from an official veterinarian, which is also how the border control posts operate.

The derogation has the advantage of not imposing an unnecessary burden in relation to animals that, because of the nature of their use, are of high health status and are under much stricter levels of supervision than farm animals or pets would be. It is appropriate that there is not an extra layer of supervision in relation to those animals at border control posts. Those facilities are also under the supervision of an official veterinarian appointed by the Scottish ministers and have to comply with strict biosecurity conditions, including the provision of quarantine facilities and separation of the animals from other animals when they arrive. Those conditions are higher than those that livestock and pets would be subject to, even if they went through a border control post.

Mark Ruskell: I would like to ask about the broader context of animal testing. Are the regulations being made in a context in which we expect animal testing in science to reduce, or do you expect it to increase? You will have heard some of the concerns about the UK registration, evaluation, authorisation and restriction of

chemicals—REACH—regulations and whether they could require repeat animal testing.

Jesus Gallego: The use of animals in research is a reserved matter so, ultimately, the policy around the regulations is for the Home Office. The expectation from an animal welfare and veterinary perspective is that the use of animals in research would be minimised and for scientific developments to lead us to a reduction in the need for the use of live animals. That is an expectation and a hope rather than a policy, because it is not our policy to make.

The Convener: I see that no other members have comments to make.

We hear loud and clear that the lack of notice is causing frustration at the Scottish Government level, but we understand that you are largely content with the impact of the SI. Thank you for your time, Mr Gallego.

Agenda item 3 is consideration of a number of notifications from the Scottish Government in relation to consent to UK statutory instruments, including the one that we have just discussed.

Fluorinated Greenhouse Gases (Amendment) (EU Exit) Regulations 2021

Storage of Carbon Dioxide (Amendment) (EU Exit) Regulations 2021

Climate and Energy (Revocation) (EU Exit) Regulations 2021

REACH etc (Amendment) Regulations 2021

The Convener: We have a number of comments to make about the process. The notifications coming in today relate to amending instruments that make technical fixes to flaws in SIs that we have already looked at. We are again frustrated about the lack of information on frameworks surrounding the SI notifications, which is a common theme of the past couple of years, not just for this committee but other Scottish Parliament committees. The frameworks that underpin the issues raised by SIs are not developing at the pace that we would like and we are certainly not getting information on them.

We have received a letter from the cabinet secretary about the Scottish Government's frustration that EU REACH was not adopted when it could have been. The cabinet secretary has flagged up to us that the chemicals industry is now heavily involved in trying to ensure that the REACH regulations do not have an adverse financial effect on the industry.

Do members have any comments to make in relation to the SIs? The Scottish Government does not object to their content, but I know that members have comments to make on the process.

Mark Ruskell: There seems to be a consistent theme and I am pretty fed up with it. At times, it feels as though we are being treated as a community council, and the only thing that we can do is to write an occasional letter to the UK Government or to the Scottish ministers.

An example of that is the F-gas statutory instrument. The notification was not clear about where the powers would be transferred to and that is simply not good enough.

The REACH regulations are not available, so we have the policy intent but not the SI itself.

At times, the process is meaningless. The committee is struggling to understand the impacts of the regulations and whether they have been properly drafted, as many of them have not been over the past year.

The point that I would make about the REACH regulations is that there is a strong industry lobby and we are trying to make sense of the ways in which the industry wants to reduce costs. It is important that the Scottish Government has a view on that. I was disappointed to learn from the cabinet secretary that the Government does not have a view and will not take a view until after the election. It is important that the Government engages with the issue and with the Parliament, particularly as there are strong industry lobby groups that are calling for changes that may or may not be in the interests of the environment.

We are in a bit of a mess and we are not left with much alternative but to keep writing the letters.

The Convener: You raise a good point about the fact that some of the SIs that have come to us in the past have turned out to be flawed. The role of parliamentary scrutiny is to identify flaws, so if we do not have the information to do that, mistakes will go through. We have a responsibility to scrutinise things properly, and if we cannot do that, mistakes will go through and yet more SIs will have to come in, for which we do not get relevant and comprehensive information.

Claudia Beamish (South Scotland) (Lab): I echo and reinforce the points that you and Mark Ruskell have made. It is disheartening to spend time as a committee member who has committed to trying to get to grips with these often important SIs—particularly those in relation to withdrawal from Europe—when they come late, which puts Scottish Government officials in a difficult position and puts pressure on the committee. Our role of

scrutiny is fundamental and it is hard to carry it out in the situation in which we are put.

It is important that we highlight our concerns about the delays, both in our legacy report and in writing to the UK Government—I know that these conversations become somewhat tedious, given that we were talking about writing such a letter last week. I understand that last week's letter might not have been sent, so perhaps when we write we could be even more robust on the matter, because I would not want a new committee to be put in the same position.

09:15

The Convener: I clarify that we have started to draft the letter to which you are referring, which is for the minister for devolution, Chloe Smith. We express our general concern about the amount of notice of and information on SIs that is being given to the committee. The letter has not gone yet, so we have a chance to include today's comments about SIs.

As Mark Ruskell said, we write letters and nothing seems different. That has been the case, not just for weeks or months but for the past couple of years, and the situation has not changed. As members rightly pointed out, statutory instruments that provide for technical fixes as a result of our leaving the EU will not stop being made in the next couple of months or so, and nor will the common frameworks stop being developed. We are looking at a timeframe of well into the next parliamentary session.

We have flagged up the issue in our legacy report. The committee that takes over from us will have to keep a close eye on the situation. We hope that our concerns, which are shared by the other devolved Parliaments—the Welsh Parliament has the same issue—lead to solutions and some fixes to the procedures. Members have made their points and we will discuss the letter that we want to send to the UK Government.

Are members content that we write to the Scottish Government to confirm that we agree that consent be given in relation to the UK SIs that are referred to in the notifications and the SI that the Scottish Government representative joined us to talk about?

I see that members are content.

Subordinate Legislation

Red Rocks and Longay Urgent Marine Conservation Order 2021 (SSI 2021/131)

09:17

The Convener: Item 4 is consideration of a Scottish statutory instrument that the Scottish Government laid on an urgent basis to protect a recently discovered nursery site for the endangered flapper skate. The committee notes the breach of the 28-day rule. The Scottish Government has written to the Presiding Officer, as required, to explain why that was deemed necessary in this case. Members know that, in portfolio questions to the Minister for Rural Affairs and the Natural Environment in the chamber, a member asked what is being done to protect the breeding ground in question. I invite members to comment.

Claudia Beamish: It is fundamentally important to protect such sites in our marine environment in the context of sustainable development. I am relieved that the SSI has been made. Other members might have questions about why the order had to be made on an urgent basis.

The flapper skate is a protected species, and I am eager for the committee to agree that the order should come into force, but I seek clarification on advice that I understand that NatureScot has given, which is that, for recreational divers and scallop divers, there could be a no-touch arrangement as opposed to a no-take arrangement—that is, people should not touch the flapper skate eggs, which take a very long time to mature.

I was recently approached by a recreational scuba diver who is also a citizen scientist and was involved in finding the eggs. The no-take zone was raised and it would be helpful to have clarification on it, because it is vital that we take with us people who have been working to discover things. It may well be that there should be a no-take zone—I would totally respect that, as I hope and expect that everybody would—but I would still like that clarification.

Angus MacDonald (Falkirk East) (SNP): Following on from Claudia Beamish's comments, I agree that there seems to be an issue on that point. We would not be aware of the situation at Red Rocks and Longay without the information that was received from scallop divers, recreational divers and citizen science divers, as well as the local knowledge and feedback from creel fishermen, yet they are all to be banned from the no-take zone. That will clearly hinder the gathering of much of the sighting information and the local

knowledge gained from divers and creel fishermen, resulting in a distinct lack of data being fed back. It is also concerning that organisations and individuals are now considering not providing data to NatureScot in case more no-take or no-touch zones are introduced, which will adversely affect their ability to operate in their areas.

I am aware of the urgency, given that the seasonal closures will end shortly. It is clearly a difficult call for NatureScot, Marine Scotland and the Scottish Government, but we need to know that they are aware of the issues that are arising and that they are taking them on board. As a committee, we need to highlight the issues and their knock-on effects to the Government.

Finlay Carson (Galloway and West Dumfries) (Con): It is important that we appreciate how important it is to protect the flapper skate, which the Scottish Government has identified as a priority feature. However, I have concerns about the lack of information regarding the consequences of a complete ban on any fishing and the impacts of the displacement of hand diving, as well as the use of mobile and fixed gear.

It would be useful to have more information on the potential impacts on the sustainability of some of the fisheries and on the steps that have been taken to address the potential loss of income for fishermen, who will not be able to fish in those areas at all. I stress the overriding importance of protecting the species, but more information would have been useful and we should request it, particularly because the order will result in complete closure of the fisheries for at least a year.

Mark Ruskell: It is right that NatureScot's initial advice took a precautionary approach and called for the closure of a wide area with a buffer zone. It takes only one mistake to dredge out or destroy an area such with those precious flapper skate eggs. Once those eggs are gone, they are gone, so a precautionary approach makes sense.

Angus MacDonald makes an important point about the role of divers doing citizen science research and identifying those precious areas in which the flapper skate are laying their eggs, which ensures that we can protect them. Although the area has been drawn tightly and is quite small, there is a need for more science and a need to involve the divers—in particular, professional scallop divers—so that they can continue their work in a broader area and can identify other areas that should be protected.

In that respect, I am happy to approve the order today—I will not object to it—but it is the absolute minimum that the Scottish Government can do. Understanding what lies beneath the seas and what we need to do to protect such areas will involve divers and citizen scientists being able to

access a wider area to bring in data to enable the design of conservation policy with full understanding and knowledge of the vulnerability of the species and where they are.

The Convener: Thank you. There is also the issue that NatureScot recommended that a wider area be protected but the Government has decided to go with the evidence of where the flapper skate eggs are that we know of. Work still needs to be done to find out where other sites could be, so we could flag up that issue and ask what has been done to identify where other breeding sites might be. This is a seriously endangered species that needs protection, but we must recognise that, as Angus MacDonald rightly said, the eggs were identified only because citizen scientists and divers had access to the area in the first place. There needs to be some balance in that.

We can reflect all those points to the Scottish Government. The order is a negative instrument, so it does not require that we vote on it, but we can mention to the Government the points that the committee has raised. I remind members that the Delegated Powers and Law Reform Committee has yet to look at the technical aspects of the order. If that committee identifies and flags any issues, it will let us know.

That concludes our committee's public business for session 5. We will move into private session to consider our annual report, which covers the 2020-21 parliamentary year, and our legacy report, which covers the committee's work throughout session 5 and will help to inform any successor committee in its future business.

Before we move into private session, I should mention that this is very likely to be the last meeting of the Environment, Climate Change and Land Reform Committee with its current members. I want to put on record my thanks to every single member who is before me now for the power of work that you have done, as well as my thanks to previous committee members for the great work they have done with us throughout the years. I also thank all the stakeholders who gave evidence and all those who work behind the scenes in the Parliament: our excellent clerks, our excellent colleagues in the Scottish Parliament information centre, the official report, broadcasting, security and everyone who has helped along the way.

I would also like to single out two members who are retiring. Stewart Stevenson, who is not with us today, is a long-serving committee member. Angus MacDonald, who is with us today, has been on the committee throughout this parliamentary session and was on the committee in its previous form, in the previous parliamentary session. I thank them both very much for their dedicated service and wish them all the very best in their

lives beyond the Scottish Parliament. Do any other members wish to comment?

Claudia Beamish: I echo your words, convener, and I would like to thank you heartily for convening the committee, managing us all and helping us to be, whenever we could be, a consensual and, if I may say so, quite thoughtful committee. Thank you very much.

The Convener: That is really appreciated. Thank you. I should mention that the other person who is involved very closely with our committee, the Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, is also retiring. She will not be in front of us again for us to thank in person—or virtually—for all the work that she has done in this portfolio, so I put on record our thanks and best wishes to her as well.

09:29

Meeting continued in private until 10:10.

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