



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

Wednesday 9 May 2012

Session 4

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RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE
13th Meeting 2012, Session 4

CONVENER

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

DEPUTY CONVENER

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

COMMITTEE MEMBERS

*Claudia Beamish (South Scotland) (Lab)

*Graeme Dey (Angus South) (SNP)

*Alex Fergusson (Galloway and West Dumfries) (Con)

*Jim Hume (South Scotland) (LD)

Richard Lyle (Central Scotland) (SNP)

*Margaret McDougall (West Scotland) (Lab)

*Dennis Robertson (Aberdeenshire West) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Nigel Don (Angus North and Mearns) (SNP) (Committee Substitute)

Nick Hawthorne (Clerk)

Richard Lochhead (Cabinet Secretary for Rural Affairs and the Environment)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

Committee Room 4

Scottish Parliament

Rural Affairs, Climate Change and Environment Committee

Wednesday 9 May 2012

[The Convener *opened the meeting at 10:00*]

Agricultural Holdings (Amendment) (Scotland) Bill: Stage 2

The Convener (Rob Gibson): Good morning, everybody. Welcome to the 13th meeting in 2012 of the Rural Affairs, Climate Change and Environment Committee. Members and the public should turn off their mobile phones and BlackBerrys, as leaving them in flight mode or on silent will affect the broadcasting system.

We have received apologies from Richard Lyle, whom Nigel Don is substituting for.

Agenda item 1 is stage 2 consideration of the Agricultural Holdings (Amendment) (Scotland) Bill. I welcome the Cabinet Secretary for Rural Affairs and the Environment, Richard Lochhead, and his officials to the meeting. I invite him to introduce his officials.

The Cabinet Secretary for Rural Affairs and the Environment (Richard Lochhead): Good morning. Given the topic, I have various legal representatives with me. Michael Anderson, Jonathan Brown, David Barnes and Fiona Leslie are the officials who are dealing with the bill.

It is good to be at the committee's 13th meeting. I am sure that it will not be unlucky for some.

The Convener: Excellent.

We move to consideration of the marshalled list of amendments. We will consider the bill in the following order: sections 1 to 6 and then the long title.

Sections 1 to 3 agreed to.

Section 4—Transitional provisions

The Convener: Amendment 1 is in the name of the cabinet secretary.

Richard Lochhead: As members know, during the stage 1 debate and in the Scottish Government's response to the Rural Affairs, Climate Change and Environment Committee's stage 1 report on the bill, I promised to lodge an amendment following my assessment of the evidence given by witnesses at stage 1 and by the committee in its stage 1 report.

As the committee knows, the bill marks the final stage in the implementation of recommendations made to the Scottish Government by the tenant farming forum. Those recommendations, a number of which have already been taken forward by an order under the Public Services Reform (Scotland) Act 2010, represent an agreed and carefully negotiated set of proposals that command stakeholder support from across the tenant farming sector.

When a secure agricultural tenancy passes, under the law of succession, the person succeeding must give notice of the acquisition to the landlord. Depending on the circumstances, that notice is given under section 11 or 12 of the Agricultural Holdings (Scotland) Act 1991. There is then scope for the landlord to serve a counter-notice and for the matter to be referred to the Scottish Land Court. Once the person has succeeded, under section 25 of the 1991 act, the landlord remains entitled to serve a notice to quit on the successor tenant farmer.

When the successor tenant farmer is not, as referred to, a "near relative" of the deceased tenant farmer, that notice is incontestable. When the successor tenant farmer is a near relative, the successor is entitled to serve a counter-notice, requiring that the Scottish Land Court consents to the operation of a notice to quit. In other words, near relatives enjoy a degree of protection that other successors do not.

Currently, the definition of a "near relative" includes a surviving spouse, a surviving civil partner and a natural or adopted child of the deceased tenant farmer. Section 1 of the bill amends that definition to include grandchildren. That change will help to meet our objective of widening the class of people entitled to that degree of protection when succeeding to an agricultural tenancy under the 1991 act. It will make it easier for grandchildren to inherit farm tenancies and will help new and younger entrants to get a start in tenant farming, which I think all members would agree will be beneficial to the wider industry.

Section 4 contains transitional provisions and section 4(1) contains the relevant provisions in relation to section 1. It currently provides for the change in the definition of a "near relative" in section 1 to have effect only where the death of the tenant farmer occurs after the bill comes into force. Amendment 1 will change that transitional provision so that it will now apply when the notice under section 11 or 12 of the 1991 act by which the successor tenant farmer acquires the tenancy is given on or after the date on which section 1 comes into force. Therefore, section 1 will now also cover circumstances in which the death of the tenant farmer occurs before the bill comes into

force but the process of acquisition by the successor is not complete.

The change is likely to benefit only a small number of individuals; nevertheless, it will afford those individuals and their families the same level of protection as all grandchildren will have in future.

Amendment 1 also gives effect to the views of the key members of the TFF. In line with the recommendations of the committee in its stage 1 report, the amendment is not involved in the passing of retrospective legislation; rather, it alters the point in the process to which the section applies.

For those reasons, I ask the committee to support the amendment.

I move amendment 1.

Alex Fergusson (Galloway and West Dumfries) (Con): I was not a member of the committee during earlier consideration of the bill, so I ask you to forgive my lack of understanding, cabinet secretary, but I think that I have just heard you say that this is not retrospective legislation. I have no problem with the impact of the amendment and I certainly do not intend to oppose it, but I have one or two concerns about the retrospective nature of what is being done. Could you expand on why you say that this is not about making retrospective legislation, if, indeed, that is what you said?

Richard Lochhead: It is not retrospective because the provision will apply only to situations that arise after the act comes into force. However, it changes the emphasis and puts it on the launching of the notice as opposed to the point at which the tenant farmer dies. If the amendment is agreed to, it will not matter whether the tenant farmer dies before or after the act comes into force; however, the notice will have to be served after the act comes into force. Had the provision been retrospective, it would have applied to all circumstances that arose before the bill came into force, but we took the decision not to take that approach. Before, what mattered was when the tenant farmer died. Now, it does not matter whether the tenant farmer dies before or after the act comes into force; what matters is when a notice is served.

Alex Fergusson: But there will still be an impact on a situation that could have occurred before the bill comes into force.

Richard Lochhead: Yes, as regards when the tenant farmer died.

Alex Fergusson: I would have thought that some of your legal representatives and others could have had considerable discussion about whether that is retrospective.

Richard Lochhead: The amendment places the emphasis on the point at which the notice to quit is served, but the situation could involve a farmer who died before the act came into force.

Alex Fergusson: So there is a retrospective element to it.

Richard Lochhead: In respect of the circumstances that lead to the notice to quit, but not in respect of the actual notice to quit.

Annabelle Ewing (Mid Scotland and Fife) (SNP): I recall the evidence that we took at stage 1 on this specific issue. We had an interesting discussion on this point. The view that was expressed by Scott Walker, the chief executive of the National Farmers Union Scotland, was that the proposal was not retrospective. I recall that there was support for such an amendment across the representatives on the tenant farming forum, with the exception of Scottish Land and Estates. However, I see from the explanatory note to amendment 1 that Scottish Land and Estates has said that, in the interest of the bill proceeding, it would be able to live with the amendment. I hope that I have not misrepresented anyone's view.

Jim Hume (South Scotland) (LD): On that point, I may be wrong—and I am not speaking for Scottish Land and Estates, either—

Alex Fergusson: Nor am I.

Jim Hume: I think that Scottish Land and Estate's opposition to retrospection was based on the provision going back perhaps five years—members may correct me if I am wrong. However, if my understanding is correct, the proposal does not seem to be legally retrospective.

The Convener: As members have no other points, I ask the cabinet secretary to wind up.

Richard Lochhead: I thank the committee again for the opportunity to move amendment 1. I listened closely to the committee's views before lodging it.

This is a useful opportunity to confirm that I will be back in contact with the committee on many of the wider issues that face tenant farmers, which we have previously discussed, and as we look to progress the TFF's on-going work. As members may know, the TFF is putting in place work plans on quite a good timescale to make recommendations to me, as cabinet secretary, and the committee. It will consider some issues that relate to recommendations in the committee's report, such as extending the definition of a near relative and rent reviews. I give the committee that assurance.

In the meantime, I welcome the committee's support—I hope—for this important amendment, which will make a difference to a small number of

families in respect of an issue that the committee flagged up to the industry and to me, as cabinet secretary.

Amendment 1 agreed to.

Section 4, as amended, agreed to.

Sections 5 and 6 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank everyone for their brevity.

Petition

Inshore Fisheries (Management) (PE1386)

10:12

The Convener: Agenda item 2 is consideration of PE1386, which was lodged on behalf of the Torridon nephrops management group and is on inshore fisheries management. I refer members to paper RACCE/S4/12/13/1 and invite comments.

While members are finding the paper, I should say that the petition concerns an area in my constituency. The issue has gone on since before I was the constituency member for the area. I suspect that, in considering the aquaculture and fisheries bill, we will deal with the on-going question, which is a conflict between mobile and fixed-gear fishing methods and the problems that are created by the fact that regulation is through a gentleman's agreement at best and not through a code of conduct that has any force nor through any legal arrangement.

We have in our paper the responses to the petition from Marine Scotland and the Scottish Government. Do members wish to comment on those responses to start the discussion?

Annabelle Ewing: I have read the paper and I still have a number of questions. I do not feel that the questions have all been explored in detail or answered; perhaps expecting that would be unrealistic, given that the issue has gone on for many years. I need further information to reach a conclusion. I do not know where that leaves the committee in terms of options.

10:15

Graeme Dey (Angus South) (SNP): I agree with Annabelle Ewing. Coming to this afresh, I have a number of unanswered questions such as "What is the extent of the conflict?" Perhaps you can shed some light on such basic issues, convener, given your local knowledge, but it would have been useful to have had that information.

The Convener: When the agreement was made that there should be no trawling in the inner area of Loch Torridon, the intention was that there would be a certain amount of creeling activity. Unfortunately, there was overfishing with creels and the marine stewardship certificate was lost as a result. There were also arguments from some trawling interests from Gairloch, Kyle and so on—not very far away—that they would be as careful about what they fished for as the creelers were, given their overfishing behaviour and the ability of people to come from elsewhere to creel there.

The petitioners are in a difficult position. They would like to have a management arrangement but we have not yet moved to marine management plans at a local level. They would like us to have more controls, but we are not in a position to put those in place without further information, as members say. I am not pointing the finger at any individuals or at any style of fishing; it is just important to know of the problems that arise where there are only gentlemen's agreements rather than codes of practice that are enforceable.

Dennis Robertson (Aberdeenshire West) (SNP): If the matter is going to be addressed in the proposed aquaculture bill, it is essential that we obtain as much information as we can prior to the introduction of the bill, because we will have to make a decision at that time. It is imperative that we seek additional information, as Annabelle Ewing and Graeme Dey have suggested, prior to that. At the moment, we are unable to move forward with the petition apart from by gaining more information.

Alex Fergusson: This is also an issue in my constituency, for obvious reasons. As Annabelle Ewing rightly said, the conflict has been going on for many years—since fishing was invented, I suspect. That does not make it less of a problem, however, and I appreciate the concerns that the Torridon group has expressed. I am struck by the Scottish Government's response to the committee's original query, which stated that

"the intention is that the newly established Fisheries Management and Conservation Group (FMAC) will be asked, together with Inshore Fisheries Groups, to develop and take forward thinking and policy on a range of issues, including mobile and static gear interactions, facing inshore fishing in Scotland."

I am not totally aware of that process, but am I right in saying that any action that we were to take would pre-empt the outcome of that proposed process? Would we be right to do that?

The Convener: We would have to decide whether we were contributing to the process by being in contact with the inshore fisheries groups and showing a proactive interest in finding a solution that the forthcoming bill is likely to be able to cope with and that is within the powers of Marine Scotland. Slow progress is being made towards marine management in local areas. The speedier that progress is, the better, and our work would try to aid that process. There is still a conflict between inshore fisheries groups and marine management, which we must address. At present, when there is an argument between creelers and trawlers, fishermen also need to have presented an overview of how the stocks might be managed in the longer term. The creelers were trying to ensure that there was a sustainable fishery there, and that is a good base from which to take the matter forward.

Alex Fergusson: So you feel that any work that we do would be complementary to that other work.

The Convener: To sum up, yes—absolutely.

Graeme Dey: Our work might also serve the purpose of further informing the committee on the overall issue. To that end, would it make sense, if the work programme permits, to look favourably on option 3 at the end of the paper, but to extend the suggested invitation to people other than the petitioners so that we can consider all sides of the argument?

The Convener: It would be interesting to have a round-table session on the specific issue. We are interested in offshore fish farming and angling interests, which might be another area for us to consider. We could get those people together, if they wish to come, on one of the days that are not taken up with anything else. That way, people would feel that they were getting a hearing without our necessarily saying that we were dealing finally with the petition. Instead, we could continue our consideration of the petition as part of the lead-up to the forthcoming bill.

Graeme Dey: I just feel that hearing simply from the petitioners would not inform us properly. We need to know about all sides of the argument.

The Convener: We need to do more work on the petition. The proposal is to write to the petitioners to seek their views, but you suggest that we expand that and include a range of people, which would include the inshore fisheries groups and Marine Scotland.

Claudia Beamish (South Scotland) (Lab): In view of the Scottish Government's points, I support Graeme Dey's suggestion. Our paper points out that the Government has stated:

"the preference is for an industry wide approach where the driver is the sustainability of stocks, communities, and the Scottish fishing industry working in partnership across sectors."

Therefore, I would not feel particularly comfortable about asking only the petitioners to give evidence. Perhaps that would be fair enough for those who have more knowledge of the industry than I do, but I would feel more comfortable if we followed Graeme Dey's suggestion. A round-table discussion would help to inform future consideration in the lead-up to the proposed bill.

The Convener: We could ask the Scottish Parliament information centre for a list of suggested witnesses for such a round-table session. I take members' point about a lot of other people being involved, not only the petitioners. The approach might be a good way to develop option 3 in the paper. In that way, we could involve the Government and Marine Scotland in the process. That would give a clearer picture for the

many of us who do not have first-hand knowledge of the issue.

Is that action adequate for now?

Nigel Don (Angus North and Mearns) (SNP): I support that approach as a general way forward, but I have a question, convener. You mentioned conflicts between anglers and netters, for example. There are obvious conflicts in the sea when people chase the same fish. Do we want the round-table discussion to be wide enough to capture all interests, which might not be wise, or would we prefer it to engage with the particular issues in the petition?

The Convener: The member might not be aware of haaf-netting and things like that in the Solway Firth.

Nigel Don: The question is how wide we want to make the discussion.

The Convener: At this stage, we must focus on the petition and specifically on the relationship between creelers and trawlers in the Loch Torridon area, the general health of the fishery and the environment and biodiversity.

We will ask SPICe to draw up a list of suggested people whom we could invite to speak about the issue. We will continue the petition and seek to arrange a round-table with the parties.

Annual Report

10:24

The Convener: Agenda item 3 is our draft annual report, which we have to consider just to ensure that we all agree. As some members have not been through this process before, I point out that it is a necessary part of the Parliament's annual activities. Basically, the annual report lays out our activities during the year. If members wish to comment on the report, now is their opportunity. It is a very clerkly worded document and is therefore non-party political. I notice that it reflects that we are having 21 meetings this year. This is meeting 13, so there are still some to go.

I ask the clerk when the report will be published.

Nick Hawthorne (Clerk): It will be published in June.

The Convener: So it is fairly imminent.

Do members have any comments?

Graeme Dey: I have a small comment on a presentational issue. In the second line in paragraph 28, the word "to" is missing between "due" and "policies".

Annabelle Ewing: I had that down as a comment.

Alex Fergusson: So did I. I have another point on the same paragraph.

The Convener: I thank the Scrabble players in the committee.

Alex Fergusson: In the bottom line of the same paragraph, there should be an s after "remit"—it should be plural.

The Convener: Excellent. Do members have any other comments on the wording or the text?

Annabelle Ewing: I have a substantive comment on paragraph 16, on page 3. It was suggested, although I am not sure whether this was passed back to the clerks, that our report on the common agricultural policy, which was in the form of a letter, should be sent to the European Parliament rapporteurs as well as to the European Parliament committee. I do not know whether that has happened.

Nick Hawthorne: We can add a line to reflect that.

Annabelle Ewing: The important point is that the report should be forwarded as soon as possible to the European Parliament rapporteurs, because things are happening.

Nick Hawthorne: Yes.

The Convener: It would be good to add that to the report, because we agreed that last week.

Have members noticed anything else?

Annabelle Ewing: Yes. There might be a slightly better way to present the information in the second sentence in paragraph 41 on page 6, which states:

“Of these meetings, 2 were wholly in private and 21 were partly in private.”

I suggest that we say, “Of these meetings, 2 were wholly in private, 8 were wholly in public and 21 were partly in public and partly in private.” That would emphasise the fact that most of our work has been in public and that the work in private has been the exception. We should reformulate the presentation of the information.

Nick Hawthorne: That is fine. The paragraph uses standard wording.

Annabelle Ewing: We should reflect more accurately the fact that we most often meet in public.

The Convener: As we are doing at present.

If members agree, we will make those amendments and submit the report in due course. Are we agreed?

Members *indicated agreement.*

Meeting closed at 10:28.

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