



OFFICIAL REPORT
AITHISG OIFIGEIL

Rural Affairs, Islands and Natural Environment Committee

Wednesday 25 January 2023

Session 6



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Wednesday 25 January 2023

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RURAL AFFAIRS, ISLANDS AND NATURAL ENVIRONMENT COMMITTEE
2nd Meeting 2023, Session 6

CONVENER

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

DEPUTY CONVENER

*Beatrice Wishart (Shetland Islands) (LD)

COMMITTEE MEMBERS

*Karen Adam (Banffshire and Buchan Coast) (SNP)

*Alasdair Allan (Na h-Eileanan an Iar) (SNP)

*Ariane Burgess (Highlands and Islands) (Green)

*Jim Fairlie (Perthshire South and Kinross-shire) (SNP)

*Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con)

Jenni Minto (Argyll and Bute) (SNP)

*Mercedes Villalba (North East Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rosemary Anfield (Scottish Government)

Mairi Gougeon (Cabinet Secretary for Rural Affairs and Islands)

Emma Harper (South Scotland) (SNP) (Committee Substitute)

Màiri McAllan (Minister for Environment and Land Reform)

Caspian Richards (Scottish Government)

Emily Williams Boylston (Scottish Government)

CLERK TO THE COMMITTEE

Emma Johnston

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Rural Affairs, Islands and Natural Environment Committee

Wednesday 25 January 2023

[The Convener opened the meeting at 09:15]

Decision on Taking Business in Private

The Convener (Finlay Carson): Good morning, and welcome to the second meeting in 2023 of the Rural Affairs, Islands and Natural Environment Committee. I remind members who are using electronic devices to switch them to silent.

We have received apologies from Jenni Minto. I welcome back Emma Harper, who is attending as a substitute. Rachael Hamilton will be participating remotely.

Our first item of business is a decision on whether to take items 5 and 6 in private. Do members agree to take those items in private?

Members indicated agreement.

Shark Fins Bill

09:16

The Convener: Our second item of business is consideration of the legislative consent memorandum for the Shark Fins Bill. I welcome Mairi Gougeon, Cabinet Secretary for Rural Affairs and Islands, and her supporting officials, who are Allan Gibb from Marine Scotland and Emma Phillips from the Scottish Government. The officials are joining us remotely. I remind them that, if they wish to speak, they should type R in the chat box.

I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Rural Affairs and Islands (Mairi Gougeon): Good morning, and thank you for inviting me to speak about the Shark Fins Bill and the associated legislative consent motion. Shark finning is the practice of removing fins from a shark at sea and returning the finless body to the water. The Shark Fins Bill is intended to ban the import and export of shark fins that have been obtained using that cruel practice.

It is a private member's bill that was introduced by Christina Rees MP in June 2022. The bill passed the committee stage in the House of Commons on 16 November with broad cross-party support, and I understand that it passed its third reading in the United Kingdom Parliament last week and is now due to be considered by the House of Lords.

It is right that we maintain the ban on shark finning practices in Scottish waters and ban the import and export of detached shark fins or things containing them.

I was pleased that we were able to secure an amendment to ensure that appeals against certain decisions of the Scottish ministers relating to exemption certificates and final penalty notices are to be made to the First-tier Tribunal for Scotland rather than the UK-wide First-tier Tribunal, which deals with reserved matters. The amendment reflects that those matters fall within devolved competence. I understand that there has been constructive working between my officials and officials in the other fisheries Administrations throughout the bill process, which is on-going, to ensure that there is that co-ordination on the implementation and ultimately the enforcement of the bill.

I am really pleased to recommend supporting the bill, as it aligns with key Scottish Government priorities, including reversing biodiversity loss and enhancing marine environmental protection. The bill also reaffirms Scotland's firm commitment to

animal welfare and ensures that we speak with greater credibility when we are advocating for shark conservation on the global stage. That is why I have recommended the legislative consent motion on the bill.

The Convener: This is one of those topics that we see on the agenda and wonder how it can possibly apply to Scotland. Could you set out the extent to which shark fins have previously been fished or traded in Scotland? You mentioned exemption certificates. Could you tell us exactly what that means and why, if I understand correctly, there should be some exemptions to allow shark fin fishing?

Mairi Gougeon: Active shark finning has been banned in the UK since 2003, and we have a “fins naturally attached” policy in relation to that. Throughout that time, the personal import of shark fins has still been permitted. There has been a 20kg allowance in relation to imports, and that is what the bill will draw to an end. We do not think that there has been a tremendous amount of trade in that time. As far as I am aware, since 2017, across the UK there has been much movement, but it is important that the loophole is closed, which is exactly what the bill seeks to do.

On your second point, there are some exemptions in the bill, but they apply only in cases when the act of importing a product that contains shark fins or a shark fin is for the benefit of conservation of the species. That is the only case in which such products would be permitted to enter the country.

Ariane Burgess (Highlands and Islands) (Green): The bill amends retained European Union law. So, it is assumed that, if the Retained EU Law (Revocation and Reform) Bill passes, the regulation will need to be retained before 2023 to ensure that the bill can operate. What discussions has the Scottish Government had with the UK Government on that?

Mairi Gougeon: Discussions between the UK Government and the Scottish Government on retained EU law are on-going. We had a meeting with the UK Government and the other devolved Administrations at the start of the week. Retained EU law is an on-going issue, and we continue to have those discussions to see what the impacts will be. I have not raised the member’s specific point, which relates to the Shark Fins Bill. As I said, it is an on-going process.

Ariane Burgess: When will you have the opportunity to raise that?

Mairi Gougeon: As I said, the discussions are on-going. We are looking at retained EU law with the UK Government in relation to what will be preserved. I cannot give a definitive response to

that question now, but we will, of course, consider that issue.

Beatrice Wishart (Shetland Islands) (LD): The LCM sets out some financial costs. It states that there will be “on-going operational costs” but says that those will be “difficult to quantify”. Why are they difficult to quantify, and to what extent will the costs fall on the Scottish Government and Marine Scotland?

Mairi Gougeon: The costs of the bill relate mainly to any additional powers that we would ask for in relation to the First-tier Tribunal for Scotland. It is not possible for us to quantify that cost at the moment without knowing how many potential cases might come forward. Additional training would also be needed. As I said in a previous response, as far as we are aware, there has been no trade since 2017, but, without knowing how many cases could come up, it is hard to put an exact figure on that.

I ask my officials whether they have anything to add in relation to that cost.

The Convener: It seems that they do not at the moment.

Mercedes Villalba (North East Scotland) (Lab): The minister mentioned that the bill will prevent the import of shark fins. Does she have any further information about fins being used as part of other products—for example, they might be ground up and incorporated into other products—or on whether there has been any research into the impact of the ban on importing such products, how widespread the practice is and how common shark fin importing is?

Mairi Gougeon: That has been one of the interesting issues during this process and in the discussions on the bill. Department for Environment, Food and Rural Affairs analysis estimates that the impact on business would be in the region of £200,000. One positive thing about the bill is that it not only covers shark fins but prohibits the import of products that contain shark fins, such as tinned shark fin soup. It encompasses those products.

Emma Harper (South Scotland) (SNP) (Committee Substitute): The committee’s briefing papers state:

“The global trade in shark fins is estimated to be 16-17,000 tonnes per year, resulting in the death of 97 million sharks annually.”

That is a huge amount, and I just wanted to ensure that those figures were pointed out. You said that the issue is not a big one for us, in Scotland, but I want to ensure that we are vocal about those figures.

Mairi Gougeon: You are absolutely right. That was one of the things that shocked me when I looked at the information on the issue. The practice has been banned in the UK since 2003, and it does not generally take place here. There are other figures. For example, I think that 73 million sharks are needed to provide every 1 million to 2 million tonnes of shark fins that are traded. It is a cruel and horrendous practice, and the bill is an important step forward in trying to put an end to the trade and in discouraging the practice.

Jim Fairlie (Perthshire South and Kinross-shire) (SNP): One point that I want to get on record, which we can see in our briefing paper, is the sheer scale of the issue—97 million sharks are killed for 16,000 to 17,000 tonnes of fins, which is horrendous.

The cabinet secretary mentioned shark fin soup in tins. Do we import tins of shark fin soup, and where do they come from?

Mairi Gougeon: I would have to look into that in more detail, but that will be covered by the import ban. I could not give you an idea of the scale of that trade. Again, my officials might have further information on the specifics of that question.

Jim Fairlie: The point that I want to make is that we are banning the import of whole shark fins, but we would still be encouraging the trade if we allowed processed shark fins to come into the country as a product to be consumed.

Mairi Gougeon: That is why the import ban covers shark fins and things containing shark fins.

The Convener: That concludes our evidence session. I thank the cabinet secretary and her officials for attending.

The committee will now review the evidence that it has heard and discuss its report in private. We will return to public session at 10 o'clock.

09:26

Meeting continued in private.

10:01

Meeting continued in public.

Genetic Technology (Precision Breeding) Bill

The Convener: Our next item of business is consideration of the legislative consent memorandum for the Genetic Technology (Precision Breeding) Bill. I welcome to the meeting Màiri McAllan, the Minister for Environment and Land Reform, and her supporting officials: Rosemary Anfield, genetically modified organisms policy officer; Caspian Richards, head of the policy and pesticide survey unit, science and advice; and Emily Williams Boylston, from the Scottish Government's legal directorate.

I ask the minister to make an opening statement.

The Minister for Environment and Land Reform (Màiri McAllan): I am happy to say a few opening words, convener. I thank the committee for inviting us to give evidence on the legislative consent memorandum for the United Kingdom Government's Genetic Technology (Precision Breeding) Bill.

As the committee will know, the UK Government's bill will remove from genetically modified organisms regulations in England

"plants and animals produced using modern biotechnologies, and the food and feed derived from them ... if those organisms could have occurred naturally or been produced by traditional methods."

The legislative consent memorandum requires us to consider one discrete aspect of the bill. The question before members today is not whether the committee and the Parliament support the policy purpose of the UK Government's bill; we have discussed that on a number of occasions, and I have no doubt that we will continue to do so.

I note also that we are not looking today at the impacts on the bill that arise as a result of the United Kingdom Internal Market Act 2020. I wrote to the convener on 10 January to highlight the Scottish Government's concerns in that regard; however, those are not under consideration today.

Nonetheless, I will discuss clause 42, which enables the Secretary of State for Environment, Food and Rural Affairs to make

"supplementary, incidental or consequential provision in connection with any provision of or made under this Act".

It therefore permits the amendment of legislation that relates to the main purpose of the bill, including devolved legislation. For example, the regulation of GMOs in Scotland and of a number of other related policy areas, such as agriculture and food, is devolved and engaged here. As

clause 42 permits the making of regulations that amend existing legislation in devolved policy areas, it is a provision within the legislative competence of the Scottish Parliament.

However, under the clause as it is currently drafted, there is no requirement for the Scottish ministers to consent to regulations, nor for the Scottish Parliament to scrutinise them. It is the Scottish Government's position that allowing UK ministers to legislate in devolved areas without consent

"represents an erosion of devolved competence",

and it therefore recommends withholding consent with regard to clause 42.

I will say a quick word on timing before I wrap up and take any questions. I note that we could have been in a different position with regard to the LCM if the UK Government had engaged with us in drafting its bill. My officials first saw the text of the bill on the afternoon prior to its introduction in the House of Commons, and—as I understand it—after, if not simultaneously with, the content being shared with the media.

It took us some time to determine whether the terms of the bill engaged devolution guidance notes and whether an LCM was required. Having established that it was, my officials and I sought to engage with the UK Government on potential amendments to clause 42, which would, in general, have required consent and might have allowed us to recommend accepting the bill or giving consent. However, that has not been fruitful and I am still awaiting a response to my letter of 8 November to Mark Spencer, the DEFRA minister.

All of that meant that it was not possible to lodge the LCM within the timescales that I know the committee would have preferred, and I apologise for that. We are happy to take any questions.

The Convener: Thank you, minister. We absolutely share your frustration at the lack of time that we have in which to look at this, and we agree that, today, we are not looking at the general principles of genetic engineering or the wider impact that the legislation might or might not have.

My question is about the fact that the Scottish Government, not the UK Government, has brought forward the LCM because the UK Government did not feel that one was required. I understand that the Scottish Government is concerned about the consequential powers in clause 42. Has the Scottish Government had any indication of how the powers are intended to be used in relation to Scotland that would cause you to raise concerns?

Màiri McAllan: There are two parts to that question. First, one of the problems with that clause and with the legislation generally is that it is very unclear about exactly how the UK

Government intends to utilise and implement it and about what implications that will have for Scotland. We have examined the powers that are granted to the secretary of state under clause 42, taken that to its logical conclusion and almost hypothesised about what could ultimately be done with those. Our view is very much that those are broad powers to make

"supplementary, incidental or consequential provisions"

in a bill that touches on a range of devolved policy issues from food and feed to animal health and welfare to the regulation of GMOs generally. There is a broad scope in a context of no clarity whatsoever.

The Convener: Have you had any indication that the UK Government would intend to use those powers?

Màiri McAllan: I think that including them in primary legislation is an indication that it would intend to use them at some point.

Secondly, in terms of any indication that we have had about how, specifically, the powers might be used, I know that the regulation of seeds is potentially an area in which there has been some indication that an early piece of work might be done. Perhaps my officials will say a little bit more about that. In essence, placing certain seeds on the market is currently organised on a GB nations basis. Changes to that, to account for this bill, might be one of the early moves of secondary legislation.

Rosemary Anfield (Scottish Government): There have certainly been discussions on the common framework on plant varieties and seeds, in which there has been an indication that regulations around seeds and the national list might be an area where DEFRA would look to use those powers early.

Jim Fairlie: I will follow on from what the minister has just said. The convener asked whether there is anywhere where you see the powers being used, but I am looking at the letter that the UK Government sent to you. It says:

"We have been clear that we do not presently intend to amend the GM regulatory regime in Scotland to remove categories of products which are currently regulated as GMOs. The views of stakeholders in Scotland will be central to decision-making in this devolved area of responsibility".

That concerns me greatly. Does the UK Government intend to go beyond the Scottish Government to speak to stakeholders first, before it comes to the Scottish Government? Also, the word "presently" concerns me. It indicates to me that what the UK Government is actually saying is that it may, at some point, decide to go beyond the Scottish Government's devolved powers so that it

can make decisions at Westminster. Is that your interpretation of that letter?

Màiri McAllan: I am not sure what letter you are—

The Convener: Unfortunately, the paper does not immediately make it clear that that letter is from the Scottish Government.

Jim Fairlie: I apologise. The papers were not clear.

Has there been any intergovernmental discussion about the regulation of new genetic techniques in the future, including the extent to which the common frameworks process has already been used?

Màiri McAllan: Yes, there has been a lot of back-and-forth discussion between Scottish Government officials and DEFRA officials. We have gone backwards and forwards on whether an LCM is required and have discussed our attempts to amend clause 42, which would require the Scottish ministers' consent. At a ministerial level, I have had less luck with having conversations with my counterparts. As I said, I wrote to Mark Spencer, the DEFRA minister, on 8 November to seek a conversation with him, and I have yet to receive a reply.

We are talking about widespread and complex issues to do with the application of regulation across the UK, which should have been brought to the common frameworks process long before the bill was introduced, but that did not happen. Information is now coming in, but the matter is exceptionally complex. Officials in each of the engaged common frameworks are now working through it.

Jim Fairlie: I will leave it there.

Emma Harper: I was interested to learn that we received 11 responses to the committee's call for views. Some of the responses specifically mentioned clause 42. The Scottish Animal Welfare Commission said that we should not agree to the LCM because there would be an impact on Scotland. What communication has the Scottish Government had from other stakeholders in Scotland about the LCM?

Màiri McAllan: I will hand over to officials, to see whether they have spoken directly to any of the stakeholders.

Caspian Richards (Scottish Government): We have not had direct contact with any of the stakeholders who submitted responses to the committee's call for evidence.

Emma Harper: There are 11 responses that express a variety of views, and it is interesting to read them. That might need to be followed up as we move forward.

Màiri McAllan: We will certainly do that.

Ariane Burgess: The minister touched on this in her opening statement. She wrote to the UK Government to say that the Scottish Government did not want to

"create further regulatory divergence on the regulation of GMOs, when the European Commission is in the process of conducting its own consultation on the issues."

The Scottish Government clearly takes a more cautious position on gene editing, which aligns more closely with that of the EU. I would like to find out more about the implications of further regulatory divergence on GMOs for the UK internal market and for the effectiveness of Scottish regulations.

Màiri McAllan: That is a great question. On the point about the EU, the question of decoupling gene editing from the definition of GMO is not being considered uniquely by the UK Government. It is responsible of the Scottish Government to consider such developments and to listen to scientists and, equally, to civic society and to communities in order to find out their views.

10:15

We are watching closely what is happening at the UK Government level and, in particular, at the EU level. That is not only because the EU has been a beacon of environmental protectionism and progress, but, most of all, because of the very real trade implications of any divergence, which I think is what you are alluding to. The UK Government's own impact assessment for its bill highlighted that any difference in position between the UK and the EU could create impediments to trade in the form of additional barriers and costs. That is a consideration, alongside the implications of the United Kingdom Internal Market Act 2020 for Scotland and the wider point about how stakeholders in Scotland feel about the issue.

Karen Adam (Banffshire and Buchan Coast) (SNP): Good morning, minister. I had a question about the EU, which you have answered quite comprehensively. Where else do you see the powers of clause 42 being used?

Màiri McAllan: That goes back to our earlier discussion—I am sorry, but I cannot remember who asked the question. At the moment, one of the main problems is that the clause is broad and we do not have a great deal of information about how the UK Government might intend to use it. We wanted to ensure that there would be a pretty standard consent mechanism, so that whatever issue arose in the future would be brought to the attention of the Scottish ministers, the Scottish Parliament would have an opportunity for scrutiny and we would consider the matter on its merits or

demerits at the time. As things stand, we do not have that opportunity.

As I have said, albeit that the bill currently applies only to England, it touches on many aspects of devolved law—for example, food, farming, animal welfare and GMOs in general. It would be wrong of me to stray too far into hypotheticals but, right now, we have no information about how the clause might be used. It could be used in relation to any of those issues.

The Convener: Is this the first time that you have had concerns over a clause similar to clause 42? Have there been other examples of Westminster legislation in relation to which you have had to consider such a clause?

Màiri McAllan: In my portfolio, I am not currently considering any other such provisions. Taking such powers in a bill is not unusual, but we would expect there to be a consent mechanism, which is the crux of our difficulty here. I am not sure whether my legal colleagues would like to add anything. I presume that they are working on aspects of other bills that I am not working on.

Emily Williams Boylston (Scottish Government): I would simply add that we need to assess each bill on its own merits. Certainly, the Scottish Parliament's standing orders do not necessarily exclude consequential provision. We considered clause 42 in the context of the bill and took into account areas that could potentially be affected by consequential amendments.

The Convener: I want to get this clear in my head. As a norm, other pieces of legislation will have a clause similar to clause 42. We see that in UK and Scottish legislation. However, it is only in this instance that the Scottish Government has decided that an LCM is required and the UK Government has decided that it is not required. Is that correct?

Emily Williams Boylston: I cannot comment on the generality of bills. I can say that this bill is significant in that it relates to an area of policy that is itself devolved but also has massive impacts on other devolved policy areas, albeit that the bill's substantive provisions apply only in England. It would probably be difficult to find other examples that would neatly match that particular pattern, which is why we assessed it on its own merits.

The Convener: Thank you. That is helpful.

Emma Harper: I want to pick up on what you said about the broader impacts of the bill. The issue is not just clause 42. Are we worried about other issues?

NFU Scotland's response to the call for views didnae really talk about clause 42, but it considered that gene editing techniques could have potential benefits for

“food, nutrition, agriculture, biodiversity and climate change.”

I am interested in hearing your thoughts on the bill's broader impacts in Scotland.

The Convener: Can I interject here? We are trying to avoid getting into a bigger discussion about the pros and cons of the Genetic Technology (Precision Breeding) Bill at the moment. It would be helpful if, at some point in the future, we could have the minister and her officials back with us to set out the Scottish Government's position. We could also take the opportunity to hear other stakeholders' views. Today, though, and with the information that is before us, I would not want to put the minister or committee members in such a position when we are specifically considering the implications of the LCM and clause 42.

Emma Harper: I apologise, convener.

The Convener: That is quite all right.

As members have no further questions, I thank the minister and her officials for joining us. I suspend the meeting briefly, after which we will move on to our next item of business.

10:20

Meeting suspended.

10:21

On resuming—

Subordinate Legislation

Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022 (SSI 2022/361)

The Convener: Our next item is consideration of two Scottish statutory instruments that are subject to the negative parliamentary procedure.

Does any member wish to comment on the Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Consequential Modifications) and Agricultural Products, Aquatic Animal Health and Genetically Modified Organisms (EU Exit) (Amendment) Regulations 2022?

As no member has indicated that they wish to comment, we will move on to consider the second SSI.

Conservation of Salmon (Scotland) Amendment Regulations 2022 (SSI 2022/363)

The Convener: Does any member wish to comment on the Conservation of Salmon (Scotland) Amendment Regulations 2022?

No member has indicated that they wish to comment.

I suggest that, at some point, we consider the paper that has been prepared on the conservation plan. Instruments on this subject often throw up difficulties on river classification, and we had 221 responses on the back of the SSI, so I will ask the clerks to write to request further information.

Alasdair Allan (Na h-Eileanan an Iar) (SNP): Whom will we write to?

The Convener: Marine Scotland.

That concludes the public part of our meeting.

10:22

Meeting continued in private until 11:33.

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