

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eleventh Delegated Legislation Committee

DRAFT FORESTRY AND LAND MANAGEMENT
(SCOTLAND) ACT 2018 (CONSEQUENTIAL
PROVISIONS AND MODIFICATIONS) ORDER 2019

Tuesday 5 March 2019

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The Committee consisted of the following Members:

Chair: MR LAURENCE ROBERTSON

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| † Adams, Nigel (<i>Parliamentary Under-Secretary of State for Wales</i>) | † Lopresti, Jack (<i>Filton and Bradley Stoke</i>) (Con) |
| † Chapman, Douglas (<i>Dunfermline and West Fife</i>) (SNP) | † Mak, Alan (<i>Havant</i>) (Con) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | † Mann, John (<i>Bassetlaw</i>) (Lab) |
| † Ford, Vicky (<i>Chelmsford</i>) (Con) | † Masterton, Paul (<i>East Renfrewshire</i>) (Con) |
| † Gaffney, Hugh (<i>Coatbridge, Chryston and Bellshill</i>) (Lab) | Murray, Ian (<i>Edinburgh South</i>) (Lab) |
| † Hall, Luke (<i>Thornbury and Yate</i>) (Con) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| † Howell, John (<i>Henley</i>) (Con) | † Sweeney, Mr Paul (<i>Glasgow North East</i>) (Lab/Co-op) |
| † Hughes, Eddie (<i>Walsall North</i>) (Con) | † Whitfield, Martin (<i>East Lothian</i>) (Lab) |
| † Killen, Ged (<i>Rutherglen and Hamilton West</i>) (Lab/Co-op) | Jack Dent, <i>Committee Clerk</i> |
| | † attended the Committee |

Eleventh Delegated Legislation Committee

Tuesday 5 March 2019

[MR LAURENCE ROBERTSON *in the Chair*]

Draft Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019

8.55 am

The Parliamentary Under-Secretary of State for Wales (Nigel Adams): I beg to move,

That the Committee has considered the draft Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019.

Mr Tomlinson—sorry, Lawrenson.

The Chair: Robertson—third time lucky.

Nigel Adams: It is early, Mr Robertson—it is a while since I have been here at five to 9. It is a great pleasure to serve under your chairmanship. This order is made in consequence of the Forestry and Land Management (Scotland) Act 2018, which for ease of use I shall refer to as the 2018 Act. The Act received Royal Assent on 1 May 2018, having been passed by the Scottish Parliament on 20 March 2018.

The order is made under section 104 of the Scotland Act 1998, which allows for necessary or expedient legislative provision in consequence of an Act of the Scottish Parliament. In this case, provision is required in consequence of the aforementioned 2018 Act. It was requested by the Scottish Government and has been agreed between the UK, Scottish and Welsh Governments.

The 2018 Act and associated secondary legislation will complete the process of the devolution of forestry, which started with the Scotland Act 1998. The 2018 Act repeals the powers and duties held by the forestry commissioners, in so far as they relate to Scotland, and provide new powers to Scottish Ministers. The 2018 Act is due to be commenced on 1 April 2019.

Over the last decade, responsibility for forestry has been increasingly managed separately in England, Scotland and Wales. While forestry policy is a devolved matter in Scotland, the management of forestry, including Scotland's national forest estate, has to date been undertaken by the forestry commissioners, who were designated as a cross-border public authority on devolution in 1999. In 2013, the functions undertaken by the forestry commissioners in Wales were transferred to Welsh Ministers and Natural Resources Wales. Selected functions continue to operate across Great Britain, including functions relating to forestry science and research, tree health, and common codes and standards.

As a consequence of the 2018 Act, and to facilitate the transfer of powers, it is necessary for the Government to lay two orders. One is made under sections 90 and 93 of the Scotland Act and is subject to negative procedure. The other—this order—is made under section 104, which

is subject to the affirmative procedure. Once these orders and the 2018 Act come into force, the forestry commissioners will no longer have responsibility for the management of forestry in Scotland, which will instead be undertaken by Scottish Ministers.

Martin Whitfield (East Lothian) (Lab): It is a pleasure to serve under your chairmanship, Mr Robertson. On the cross-border question, a significant number of forests straddle the Scottish-English border. I looked in vain for a definition of who would deal with those forests, how that would be identified and whether Ministers in Scotland may—probably rightly—be able to influence the management of the forests south of the border, because they are a single forestry unit.

Nigel Adams: The hon. Gentleman is absolutely right to raise that point. For clarification, the order makes provision for cross-border arrangements that may be entered into by Scottish Ministers, the forestry commissioners and the national resources body, in the case of Welsh Ministers. The jurisdictions concerned are England, Scotland and Wales, and a memorandum of understanding is being drafted to agree who will be responsible in these territories.

The order will enable the 2018 Act to be implemented in full. It provides new powers to Scottish Ministers and makes a number of consequential amendments to reserved legislation, with a particular focus on the Forestry Act 1967. Articles 3 and 4, along with similar provisions in the negative procedure order I mentioned earlier, will enable cross-border arrangements to be entered into by Scottish Ministers, the forestry commissioners and various other bodies. While forestry functions and management of the national forest estate will be fully devolved, the order will enable Scottish Ministers to enter into arrangements with other bodies so that each may deliver certain functions on the other's behalf. This will avoid unnecessary duplication of functions across Administrations and will allow for refreshed and strengthened cross-border co-operation and partnership working between England, Scotland and Wales, as well as for a co-ordinated approach to issues such as the management of plant-based pests and diseases to continue.

Article 5 will confer powers on Scottish Ministers to promote, develop, construct and operate installations for or in connection with the generation, transmission, distribution and supply of electricity produced from renewable sources and to use electricity produced by virtue of these powers.

Martin Whitfield: The Minister is being generous with his time. With regard to article 5(4), I have two questions. Fossil fuels are defined as coal and natural gas, including substances

“produced directly or indirectly from a substance”

mentioned in this paragraph. What would the situation be with regard to waste incineration for the production of electricity, given that the majority of the waste that is incinerated originated as a fossil fuel? I am thinking in particular of the plastics.

Secondly, the biomass industry has a great effect on the timber industry because, effectively, it removes elements of that industry that previously went into furniture making and that have now gone to biomass. Has the

Minister's Department considered the effect of removing from the timber industry the product that is now intended to go to biomass?

Nigel Adams: As a former chairman of the all-party parliamentary group on biomass, I can assure the hon. Gentleman that great quantities of the biomass produced are not produced in Great Britain in the first instance. The product that is not used in the timber industry or for furniture tends to be waste product—thinings and elements of forestry that could not be used anywhere else. I hope that satisfies the hon. Gentleman. The order covers renewable sources of energy, not fossil fuel waste. It does not change the situation in that regard, and fossil fuel waste would not appear to be considered as a renewable energy source.

These powers are currently exercisable by the forestry commissioners in Scotland. When the Forestry Act 1967 is repealed, as it relates to Scotland, it is necessary to transfer these functions to Scottish Ministers to ensure they have the same powers the forestry commissioners have under the current arrangements. The order also makes a number of consequential amendments to the Forestry Act 1967, related statutory instruments and other primary legislation to reflect the removal of the forestry commissioners' functions in or as regards Scotland.

UK and Scottish Government Ministers and officials have worked closely to ensure this order makes the necessary amendments to legislation covering Great Britain in consequence of the 2018 Act. It represents the final stage of devolving forestry to the Scottish Government. It is necessary in consequence of the 2018 Act and demonstrates the Government's continued commitment to working with the Scottish Government to make the devolution settlement work. I hope Members will agree that the order is a sensible use of the powers in the Scotland Act 2018 and that the practical result is something to be welcomed.

9.3 am

Mr Paul Sweeney (Glasgow North East) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Robertson. The order in front of us today makes provisions in consequence of the Forestry and Land Management (Scotland) Act 2018, and essentially follows on from section 81 of that Act. Section 81 provides that the functions of the forestry commissioners, which are exercisable in or as regards Scotland immediately before the date on which that section comes into force, are no longer exercisable in or as regards Scotland. It would be helpful for the Committee if I give a brief overview of the order before seeking clarity on some issues within it.

First, articles 3 and 4 relate to cross-border arrangements. Article 3 makes provisions for cross-border arrangements between Scottish Ministers and other bodies. Article 4 makes provision for cross-border arrangements between the forestry commissioners and Scottish Ministers for the purposes of carrying out the former's functions as set out in article 4(2).

Secondly, article 5 makes provision to allow Scottish Ministers to construct renewable energy installations and generate, transmit, distribute, supply and ultimately use the electricity produced from these sources for the purposes of carrying out the Scottish Ministers' functions, as detailed in article 5(2). Finally, article 6 and the

schedule make necessary consequential modifications to primary and secondary legislation as a result of the 2018 Act.

The order is fairly non-contentious and is, as I have detailed, necessary to make consequential provisions as a result of the 2018 Act. However, I would appreciate it if the Minister could clarify some areas where I have concerns.

Article 3 seems to contain a fair amount of scope for cross-border arrangements between Scottish Ministers and other persons or bodies, and Welsh Ministers are included in that list of other persons. Is there a particular reason for specifying only Welsh Ministers here, and not Ministers of the Crown in different Government Departments, for example?

As far as I can tell, regulation making is also not devolved as part of this statutory instrument. What mechanisms are in place to ensure that regulations are not being made elsewhere that would hamper the ability of Scottish Ministers to carry out their newly devolved functions?

Article 5 makes provisions for Scottish Ministers to develop, construct and operate installations for the generation, transmission, distribution and supply of electricity produced from renewable sources. I would be interested to hear the Minister's thoughts on how this works in conjunction with schedule 5, head D of the Scotland Act 1998. Head D deems that the generation, transmission, distribution and supply of electricity shall remain reserved. I understand that the difference here is about generation as part of a renewable energy programme and that these powers are already held by the forestry commissioners, but given that we live in particularly turbulent political times, what processes have been put in place to ensure that Scottish and UK Ministers are aware of the respective boundaries of their powers and do not inadvertently stray into one another's territory? There is a risk of this issue becoming politicised and ultimately confused, as the nuance is rather technical, so demarcation could be better defined.

Finally, I have more of a general query for the Minister. As a consequence of this order, a few changes are made to primary and secondary legislation covering a couple of different policy areas. How does the Minister see these changes fitting into the common UK frameworks agreed between the UK Government and the Scottish Government?

Martin Whitfield: My hon. Friend raises the issue highlighted in part 2 of the schedule—on modifications of subordinate legislation—and indeed the frameworks. I draw the Committee's attention to paragraph 66, which discusses the Plant Health (Wood Packaging Material Marking) (Forestry) Order 2006. A significant amount of the palleting used in the United Kingdom to export goods into the European Union fails to meet EU regulations, which means that it cannot be used in the case of a no-deal Brexit. Does my hon. Friend therefore agree that the order may be a missed opportunity to deal with bioprotection with regard to wood offcuts, particularly dry kiln heating wood to make sure it is safe?

Mr Sweeney: I thank my hon. Friend for his typically forensic analysis of the detail and for making that pertinent point. Perhaps the Minister can offer a more

[Mr Sweeney]

interesting analysis of that impact. My understanding is that there is to be no divergence from current regulations in the event of a withdrawal agreement being ratified by the House of Commons, but I am not entirely clear on what happens if there is no deal and we crash out of the EU on World Trade Organisation terms. Does the Minister see this order as having an impact on that arrangement, regardless of whether there is a deal?

9.8 am

Douglas Chapman (Dunfermline and West Fife) (SNP): We welcome the Minister's comments on the statutory instrument. We welcome the transfer of powers to Scottish Ministers overall. Of Scotland's landmass, 19% is under forestry or woodland, which adds £1 billion to the Scottish economy every year and is responsible for maintaining 25,000 jobs in the industry.

"Scotland's Forestry Strategy 2019-29" outlines several ambitions, including to have a more sustainably managed forestry and woodland structure; to expand areas of forestry and woodland; to look at wider land use issues around forestry and create economic opportunities around that; and to bring more efficiency and productivity into the industry. Overall, we welcome the measures, and we hope that the transfer to Scottish Ministers will enhance the chances of delivering that strategy over the next 10 years.

9.10 am

Nigel Adams: I thank hon. Members and the shadow Minister, the hon. Member for Glasgow North East, for their valuable contributions. The shadow Minister raised a couple of points. On cross-border issues, arrangements between UK Ministers and Scottish Ministers are provided for in a separate Order in Council, using specific powers in the Scotland Act for that purpose, so there is no confusion over the arrangements. As I mentioned earlier, a memorandum of understanding is being drawn up to ensure that those lines are clearly demarked.

On the salient point from the hon. Member for East Lothian about plastics, the incineration of plastics is not specifically addressed in article 5, which confers broad powers on Scottish Ministers to develop renewable energy installations. This is simply a continuation of the forestry commissioners' existing power under the 1967 Act. The consequential amendments in the schedule to the draft order simply tidy up UK primary and secondary legislation in consequence of the devolution of forestry to Scottish Ministers.

Martin Whitfield: Although not specifically included, are plastics not specifically excluded, because they originate from oil, which is specifically excluded by the draft order? I am more than happy for the Minister to write to me on that.

Nigel Adams: I am not aware of whether it is specifically excluded or included for that purpose, but I am more than happy to write to the hon. Gentleman on that serious point, which needs addressing.

The shadow Minister raised electricity generation. That is very much a reserved matter, which is why the draft order, which has been made by the UK Government, is able to confer the power to develop renewable installations. The conferral of those specific functions on Scottish Ministers does not affect the reservation of energy matters set out in article 5.

The Government are absolutely committed to strengthening the devolution settlement for Scotland, and we continue to work collaboratively with the Scottish Government to that effect. I hope the draft order, which completes the devolution of forestry responsibilities to Scottish Ministers, demonstrates that commitment. On that basis—

Martin Whitfield *rose*—

Nigel Adams: Almost on that basis. I will give way.

Martin Whitfield: I am grateful to the Minister for indulging me in my series of questions—I felt it was easier to do things this way than to give a speech. My final point regards the Forestry Commission. It is not losing its legal responsibility, because the draft order will allow it to enter into arrangements with Scottish Ministers. For clarification, where do the Government think that the legal responsibility to the public will lie—with the forestry commissioners, whose powers have been devolved, or with Scottish Ministers?

Nigel Adams: My understanding is that this is a tidying up of the statute book on the back of the 2018 Act and that it completes the devolution of forestry to the Scottish Government. I hope that that offers some clarity.

On that basis—taking my second opportunity—I commend the draft order to the Committee.

Question put and agreed to.

9.14 am

Committee rose.