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Rural Economy and Connectivity Committee Comataidh Eaconomaidh Dùthchail is Co- cheangailteachd

Subordinate Legislation considered by the Rural Economy and Connectivity Committee on 28 November 2018



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Rural Economy and Connectivity Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Rural Economy and Connectivity.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/rural-committee.aspx>



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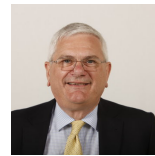
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Executive summary

1. This report details the Rural Economy and Connectivity Committee's consideration of the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft].

The Committee agreed to recommend to the Parliament that it approves the draft instrument.

Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft]

The Committee reports to the Parliament as follows—

2. On 5 November 2018, the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft] was laid before the Parliament and was subject to the affirmative resolution procedure.

Background to the instrument

3. The policy objective of this Order is to modernise the list of improvements for which compensation may be payable at the end of a tenancy, to ensure that they are fit for purpose and reflect the realities of modern farming practice. The changes made to schedule 5 of the Agricultural Holdings (Scotland) Act 1991 are not to be retrospective and do not change the terms on which any existing improvements were carried out, to avoid any unfairness to either landlord or tenant.
4. An earlier version of this Order was laid and withdrawn by the Scottish Government to correct a technical error noted by the legal advisors to the Delegated Power and Law Reform Committee.

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on [13 November 2018](#) and agreed not to draw the Parliament's attention to the instrument on any grounds within its remit.

Rural Economy and Connectivity Committee consideration

6. At its meeting on [28 November 2018](#), the Rural Economy and Connectivity Committee took evidence on this instrument from the Cabinet Secretary for the Rural Economy and his officials.
7. The Committee asked about consultation with industry on the Order, whether any particular concerns were raised and why a catch-all clause was not included. On the latter point, the Cabinet Secretary for the Rural Economy responded —

- ” we elected not to include that kind of general clause, because it is open to interpretation and might therefore lead to more disputes and disagreements over what is and what is not in scope.

Source: Rural Economy and Connectivity Committee 28 November 2018 [Draft], Fergus Ewing, contrib. 140¹

The Cabinet Secretary subsequently committed to regularly reviewing the Schedule, at least every 5 years.

8. The Committee also raised points relating to the European Convention on Human Rights (ECHR) and improvements as part of diversification (which are subject to separate compensation and approval arrangements). The Cabinet Secretary outlined that he was not aware of any ECHR issues and on the latter point that further clarification would be provided in guidance, through a code of practice.
9. The Cabinet Secretary subsequently moved the following motion in his name—

S5M-14752—That the Rural Economy and Connectivity Committee recommends that the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft] be approved.
10. The Committee agreed the motion without division.
11. The Official Report of the meeting is available [online](#).

Recommendation

12. The Rural Economy and Connectivity Committee recommends to the Parliament that the Agricultural Holdings (Scotland) Act 1991 (Variation of Schedule 5) Order 2019 [draft] be approved.

Rural Economy and Connectivity Committee

Subordinate Legislation considered by the Rural Economy and Connectivity Committee on 28 November 2018, 10th Report, 2018 (Session 5)

- [1] Rural Economy and Connectivity Committee 28 November 2018 [Draft], Fergus Ewing, contrib. 140, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=11815&c=2133321>

