

RURAL AFFAIRS COMMITTEE

Tuesday 18 January 2000
(*Afternoon*)

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RURAL AFFAIRS COMMITTEE

1st Meeting 2000 (Committee Room 2)

CONVENER :

*Alex Johnstone (North-East Scotland) (Con)

COMMITTEE MEMBERS:

*Alex Fergusson (South of Scotland) (Con)
*Rhoda Grant (Highlands and Islands) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Lewis Macdonald (Aberdeen Central) (Lab)
*Irene McGugan (North-East Scotland) (SNP)
*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
*Mr John Munro (Ross, Skye and Inverness West) (LD)
*Dr Elaine Murray (Dumfries) (Lab)
*Cathy Peattie (Falkirk East) (Lab)
*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

*attended

THE FOLLOWING MEMBERS ALSO ATTENDED:

The Minister for Rural Affairs (Ross Finnie)

WITNESSES:

Mr Philip Galbraith (Scottish Fisheries Protection Agency)
Miss Frances Reid (Scottish Executive Rural Affairs Department)
Mr Robin Weatherston (Scottish Executive Rural Affairs Department)

COMMITTEE CLERK:

Richard Davies

SENIOR ASSISTANT CLERK:

Richard Walsh

ASSISTANT CLERK:

Tracey Hawe

Scottish Parliament

Rural Affairs Committee

Tuesday 18 January 2000

(Afternoon)

[THE CONVENER *opened the meeting at 14:05*]

The Convener (Alex Johnstone): Good afternoon, ladies and gentlemen. It is my pleasure to welcome you to the first meeting of the Rural Affairs Committee in 2000. It is my particular pleasure to welcome the Minister for Rural Affairs, Ross Finnie, who is here to deal with item 3 on the agenda. We hope that he will also be able to help us with item 2.

Deputy Convener

The Convener: Item 1 is the appointment of a deputy convener. On 16 December, Parliament decided that the deputy convener should be chosen from the Scottish National party. I have made inquiries and discovered that the preferred nominee is Alasdair Morgan; it gives me great pleasure to nominate him. Do I require a seconder? Apparently, I do not. Are you prepared to accept the role, Alasdair?

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Indeed.

The Convener: I offer Alasdair the opportunity to say a few words.

Alasdair Morgan: Thank you.

I thought that it would be appropriate, as this is our first meeting since the sinking of the Solway Harvester, for the committee to express its profound regret and send its condolences to the family and next of kin. We hope that the on-going activities off the Isle of Man today and later this week will result in the recovery of the bodies and ascertain the cause of the disaster.

The Convener: Thank you for those words, Alasdair.

It has been pointed out to me that I must put the question formally on the selection of the deputy convener. Do members agree that Alasdair Morgan should be the deputy convener?

Alasdair Morgan was elected deputy convener by acclamation.

Future Business

The Convener: Item 2 concerns the preliminary discussion that took place at our previous meeting about a work programme for the year ahead. We agreed that we should organise a round-table discussion with ministers before reaching a conclusion on our programme of inquiries. As the Minister for Rural Affairs is with us today, we have an opportunity to discuss a possible date for such a meeting. The proposed time, date and venue are 10.30 am to 11.30 am on Monday 31 January at the Scottish Executive rural affairs department headquarters. Would that be suitable, or do we need to look for an alternative?

Alasdair Morgan: I offer my apologies.

Alex Fergusson (South of Scotland) (Con): So do I.

The Convener: What about other members? If the majority can fit that meeting into their schedules, shall we go ahead with it?

Members indicated agreement.

Pesticides (Maximum Residue Levels in Crops, Food and Feedingstuffs) (Scotland) Regulations (SSI 2000/Draft)

The Convener: Item 3 on the agenda concerns the first affirmative instrument to come before the committee. Under rule 10.6 of standing orders, the Rural Affairs Committee is required to consider a formal motion of approval and report to the Parliament with its recommendations on whether the instrument be approved. The Minister for Rural Affairs, Ross Finnie, will speak to the instrument; he is joined by representatives from the Scottish Executive rural affairs department, Miss Frances Reid and Mrs Eileen Kennedy.

The Subordinate Legislation Committee considered the instrument this morning and did not highlight any technical problems with it. The minister and his assistants will explain the nature of the document and then we will have an opportunity to consider the motion.

The Minister for Rural Affairs (Ross Finnie): Thank you very much, convener. I congratulate Alasdair Morgan on his appointment as deputy convener. As the cabinet minister with ultimate responsibility for fisheries, I wish to associate myself with his remarks, the sentiments of which are shared by the rest of the committee.

I look forward to meeting the committee at our humble abode in Pentland House. I hope that you will not be disappointed if we cannot find a room

that matches the quality of this committee room. As those of you who have been there will know, Pentland House is an example of 1960s architecture known commonly as early matchbox, so it is very brave of you, convener, to bring your committee to us; I just hope that you do not think that our accommodation lacks the basic facilities or the grandeur that you obviously enjoy here.

It is my duty to introduce the Pesticides (Maximum Residue Levels in Crops, Food and Feedingstuffs) (Scotland) Regulations 2000. I should stress at the outset that, by their technical nature, pesticides are a complex area, as some committee members will well understand. I hope in these few remarks to remove some of that complexity.

The purpose of this weighty tome is twofold. First, it introduces maximum residue levels—or MRLs—for a new fungicide, azoxystrobin. Secondly, this instrument consolidates regulations that were made in 1994 and five sets of subsequent amending regulations—it brings everything together into a single statutory instrument.

The regulations are made jointly under the European Communities Act 1972 and the Food and Environment Protection Act 1985. The former act provides powers to introduce MRLs adopted as part of the EC's programme to harmonise residue levels throughout the Community. The latter act provides the legislative vehicle to introduce national MRLs pending the adoption of harmonised EC limits. MRLs introduced under the Food and Environment Protection Act 1985 require affirmative resolution procedure, which is why we are here today.

It might be helpful to explain the extensive system of controls that operates for pesticides. Pesticide regulation is the responsibility of ministers in five regulatory departments. As well as from the Scottish Executive, ministerial approval is required from the Ministry of Agriculture, Fisheries and Food, the Department of Health, the Department of the Environment, Transport and the Regions and the Welsh Assembly. Only approved pesticides can be advertised, sold, supplied, stored or used. Before approval can be given, the Pesticides Safety Directorate and the Health and Safety Executive carry out a careful scientific evaluation of how safe the pesticide is for human beings, non-target species and the wider environment. The efficacy of the product is also carefully considered. The final scrutiny is given by the independent Advisory Committee on Pesticides.

14:15

The product can be marketed only when

ministers are satisfied on the basis of the expert independent advice that the product can be used without unacceptable risk to people, livestock, domestic animals or the environment. Once a pesticide is approved, it will continue to be subjected to routine review. It may be reviewed at any time if any evidence emerges about its safety. If deemed appropriate, the approval can be restricted or revoked where there are safety concerns.

An integral part of the system of controls on pesticides is the establishment of maximum residue levels. MRLs are based on the maximum residue occurring in a crop when a pesticide is used as approved. To enable members to understand their significance, let me explain briefly how MRLs are derived.

Trials for a particular pesticide are conducted on crops to establish the maximum residue level that will occur in a crop when the pesticide is used in accordance with its proposed conditions of use. A complex scientific risk assessment is undertaken to establish whether the maximum residue level established from the trial would pose a risk to consumers. That risk assessment considers safe intake levels and consumption by different consumers and by different population groups, including infants and children. It also takes account of the range of crops on which a pesticide is used.

From a consumer protection point of view, the essential point is that, if a particular residue level is established to be safe, that level will be agreed as the maximum residue level, which will then be introduced into legislation. If, on the other hand, a residue level is found to be unsafe, that use of the pesticide would not be approved and no MRL would be set. Thus the maximum residue level corresponds to the maximum level of residue found in a crop when a pesticide is used in accordance with approved methods. That level is often substantially lower than what would be regarded as safe.

Most MRLs in the regulations originate from EC directives. Those who have read the regulations carefully, particularly the two sections at the back, will have noted that almost 11,000 individual MRLs are listed. The regulations largely comprise an extensive numerical schedule, so the legislation is highly technical, although it has an important practical purpose.

Pesticide residues in food are checked annually through a major surveillance programme. That programme, organised through the working party on pesticide residues, involves collecting 2,000 to 3,000 samples of food each year, mainly from retail outlets around the United Kingdom. Each sample is tested, usually for many different pesticides, with the result that some 90,000

analytical results are generated each year. The annual cost of the programme is currently around £1.7 million. A substantial amount of monitoring is also conducted by the food and farming industries.

Under the programme, milk, bread and potatoes are tested each year. Other produce is tested less regularly. The programme is concerned with fresh produce, particularly fruit and vegetables, because that is where residues are most likely to be found. However, some processed foods, and particularly processed baby foods, are also tested. On the whole, the results from the programme are reassuring. In 1998, for example, 73 per cent of the samples contained no detectable residues, and only 1 per cent of samples contained residues above the MRL.

The results of the programme, together with the MRLs established in the regulations, are used in three main ways: first, to check that regulatory decisions on pesticide approvals have been soundly based and that the scientific assessment reflects what is happening in the field; secondly, to check that farmers are using approved pesticides in accordance with those approvals and that there is no misuse; finally, to ensure that there is a standard against which to judge produce imported from overseas, where we cannot control directly how pesticides are used. The MRL regulations that I am introducing today provide a benchmark for us to do all those things.

The surveillance programme that I described shows that residue levels above the MRL are uncommon. However, they occur in both domestic produce and imported food. Occasionally, there have been repeated breaches of a particular MRL. In such situations, samples are collected direct from the growers or from retailers, with a view to prosecution. The regulations provide for fines of up to £5,000 on summary conviction and an unlimited fine on indictment. If necessary, they provide also for produce with levels above the MRL to be seized and destroyed.

Maximum residue levels are a key element in pesticide controls and an important component in our wider food safety arrangements. I believe that the consolidation of the current statutory instruments will be helpful to all those who work with the regulations.

The Convener: Thank you. Are there any questions for the minister and his officials?

Alasdair Morgan: I noticed that there is only one category for wild berries, whereas all the individual varieties of cultivated berries are distinguished. For wild berries, the MRL was also usually lower than for individual varieties of cultivated berries. I assumed that, because you did not distinguish between different types of wild berry, you had decided to take as the MRL for wild

berries the lowest of the MRLs for cultivated berries. However, I noticed that in the case of one compound—cypermethrin—the MRL for wild berries is 2 mg, whereas for cultivated strawberries it is 0.05 mg. Why is 2 mg an acceptable MRL for a wild strawberry, when for a cultivated strawberry the MRL has to be as low as 0.05 mg?

Ross Finnie: It is obvious why Alasdair Morgan has been made deputy convener—anyone who can display that grasp of cypermethrin in strawberries and wild berries is well worthy of that post. I cannot respond directly to the question, but we can certainly get the information.

Miss Frances Reid (Scottish Executive Rural Affairs Department): I do not think that we can respond at this point.

Alasdair Morgan: It is a genuine question.

Ross Finnie: We know from discussions that what you said about the minimum level is along the right lines. We will undertake to respond to the question in writing at the earliest opportunity. Although what you say is informative, I do not think that it undermines the objectives of these regulations.

Alasdair Morgan: I was not suggesting that.

Ross Finnie: Indeed you were not, but I do not think that it should delay the process.

The Convener: Would it be fair to say that the residue levels for individual crops set out in this instrument are substantially the same as the figures that appeared in previous instruments?

Ross Finnie: There has been no change. At the moment, practitioners have to refer to five or six separate instruments to ascertain the appropriate level, which has become unwieldy for people in the trade. This instrument consolidates the earlier legislation, as well as introducing one new range of MRLs.

The Convener: Is it true that the chemical that Alasdair Morgan mentioned has not been included in previous statutory instruments?

Ross Finnie: It has not. This is its first appearance.

The Convener: Broadly, what is the function of the chemical?

Ross Finnie: It is a fungicide that acts as a spore inhibitor and has been approved for use in wheat and barley.

Alex Fergusson: Minister, you said that, rather worryingly, there are occasionally breaches of MRLs. Can you expand on that? How often do such breaches occur? When was a fine last imposed?

Ross Finnie: It does not happen frequently. Your question, Alex, was probably triggered by the fact that I referred to one pesticide with particular problems—vinclozolin, which is used with lettuce. Residues of non-approved pesticides, such as vinclozolin, were found in UK winter lettuce over a number of years. Enforcement action was taken in 1994-95, 1995-96 and 1996-97, which resulted in the successful prosecution of five UK growers. It is extremely disappointing that someone would seek to abuse the system, but there is some comfort in the fact that the systems were in place to detect that abuse and to produce a successful prosecution.

Alex Fergusson: That was some four or five years ago?

Ross Finnie: Yes. The industry has no history of abusing the systems that are in place. Experience indicates that such occasions are very much the exception rather than the rule, as the industry understands the importance of following the regulations.

The Convener: As there are no further questions, I thank Eileen Kennedy and Frances Reid for their help and invite them to withdraw from the table.

The next stage in dealing with this affirmative instrument is for the Minister for Rural Affairs to move motion S1M-420. I remind members that the committee has no power to amend the motion or the order. Our task is to recommend whether the instrument shall or shall not be approved.

Ross Finnie: I move,

That the Rural Affairs Committee in consideration of the Pesticides (Maximum Residue Levels in Crops, Food and Feedingstuffs) (Scotland) Regulations 2000, recommends that the Regulations be approved.

The Convener: The question is, that motion S1M-420, in the name of Ross Finnie, be agreed to.

Motion agreed to.

The Convener: I thank the minister for his contribution to this agenda item and for helping us to understand developments in pesticides.

Shetland Islands Regulated Fishery (Scotland) Order 1999 (SSI 1999/194)

The Convener: Item 4 on the agenda is another piece of subordinate legislation. We are to consider the Shetland Islands Regulated Fishery (Scotland) Order 1999 (SSI 1999/194).

The Subordinate Legislation Committee discussed the order this morning and several

concerns were expressed about technical aspects of it. The committee has continued that matter until next Tuesday, when it will consider the Executive's response, and a report will be issued later next week.

As the lead committee, we are obliged to consider that report before we report to the Parliament. At this stage, do members believe that it would be appropriate to continue consideration of this matter until our next meeting, so that the views of the Subordinate Legislation Committee can be properly taken into account?

Members indicated agreement.

The Convener: In that case, we will move on.

Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000

14:30

The Convener: Item 5 is consideration of another piece of subordinate legislation: the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000. We are considering this order under the negative procedure. That means that, unless a formal motion to annul the order is agreed, the order will come into effect. No such motion for annulment has been lodged to date, so the purpose of today's discussion is to examine the instrument. Mr Robin Weatherston and Mr Philip Galbraith will explain the document to us.

Two explanatory notes are attached to this Scottish statutory instrument as part of committee document RA00/1/3. The first, by the clerks, sets out the key dates for action. The second, by the Scottish Executive rural affairs department, provided at our request, explains the order. There is a third note at the end of the order that appears on all subordinate legislation.

I invite the representatives from SERAD to go over the statutory instrument and explain it to us.

Mr Robin Weatherston (Scottish Executive Rural Affairs Department): As the order is concerned with the implementation and enforcement in Scotland of a European regulation, it may be helpful to explain a little bit of the background to the regulation.

The requirement to complete fishing logbooks and landing declarations has been mandatory since 1984. In 1993, an EC regulation introduced a community monitoring and control system to deal with the fisheries sector from the producer to the consumer. That regulation introduced sales

notes and transport documentation requirements. Since its introduction, the regulation has been amended a number of times. The most recent changes are set out in EC council regulation 2846/98, agreed at the Fisheries Council in December 1998. Those changes require an order to give effect to the regulation now.

The 1998 regulation aims to strengthen and improve fisheries controls and fill gaps in the existing controls. The significant changes for the industry have been identified in the Executive note that we provided for committee members. The changes are: the requirement to complete logbooks for all vessels over 10 m, doing away with an existing derogation for 10 m to 17 m vessels that spend less than 24 hours at sea; the requirement to record catches of all species in logbooks and landing declarations; the mandatory submission of sales notes; the requirement to submit takeover declarations for deferred sales of fish; and documentary requirements relating to the transportation of fish. There are also requirements on fisheries departments relating to data capture, collection and enforcement.

The thrust of the regulation is to ensure appropriate controls on the fisheries sector. It is in line with UK and Scottish fisheries policy and is part of a wider action plan to tackle the generic problem of black fish throughout the European Community. Members will appreciate that we have a legal obligation to implement the regulation in the UK and in Scotland.

That explains the policy background. We have had significant discussions with the industry over the past six or seven months about the practical implementation of the regulation. We have produced guidance notes for use by various sectors in the industry to help them to understand the new requirements. We have taken measures to ensure that the new requirements are in line with current industry practice.

As a result, we calculate that the added burden on Scottish industry will be very limited. Limited changes in practice are required as a result of the order. We cannot expect the industry to welcome the new requirements with open arms, but the measures that we have taken to alleviate the worst effects are appreciated.

The measures in the EC regulation are directly applicable to the fisheries sector, but we need to transpose those requirements into domestic law. In the schedule the order identifies offences against the regulation, sets out penalties for offences and makes provision for enforcement. The order relates only to Scotland, but parallel orders are being made to ministers of the Crown and to Welsh ministers in relation to their responsibilities.

I hope that that sets out the background to the order. I will be happy to answer any questions that you have.

Richard Lochhead (North-East Scotland) (SNP): I have a number of concerns about these control regulations. As the committee will be aware, the industry is currently under a great deal of pressure. The last thing that it wants is an increase in control regulations, which means an increase in bureaucracy and paperwork.

I want to make a couple of quick points before developing one point that is of particular importance. The regulation refers to the completion of logbooks for all vessels 10 m or more in length. Is it the case that a new logsheet is on the way already, without this regulation, and is there a danger that the industry will have to go back to square one in a few months' time, once the new logsheet that is already in the pipeline comes into force?

Mr Weatherston: You are right, in the sense that a new logbook regulation is currently under discussion in the European Community. The final form of that has yet to be agreed. We want to ensure that whatever comes out of that negotiation is sensible and respects existing practices, and that any changes that are required are absolutely desirable. In general, the negotiations are to do with the detail of the logbook, rather than the requirement to complete and submit a logbook. I do not think that there will be an implicit additional burden on the industry simply because of the requirement to submit logbooks. Most fishermen do that in any event.

My colleague makes the reasonable point that if and when we have specific proposals on logbooks, we will engage in consultation with the industry, just as we did in the case of the control regulation. Any changes will be discussed with the industry well in advance.

Richard Lochhead: Are you able to give an assurance that, once the new logsheet comes in, the industry will not have to go back to square one?

Mr Weatherston: It is reasonable for me to give that assurance. There is no intention of ripping up everything that is currently done by way of controls and introducing a system that is unrecognisable. That is not a practical option. The absolute requirement to track fish from the sea bed through to its final destination remains. The process, if not the detail of the process, will remain the same.

Richard Lochhead: My second concern relates to the

"mandatory submission of sales notes by buyers and sellers of fish".

Are we talking about one document or separate

documents for buyers and sellers?

Mr Weatherston: I think that we are talking about one document submitted by either the seller or the buyer, rather than both.

Richard Lochhead: I have two final concerns. The industry has expressed considerable concern about the requirement for documents for the transportation of fish. As the committee may be aware, a buyer may arrive at the quayside and buy fish from a dozen boats. As things stand at the moment, after the auctioneer has auctioned the fish, the buyer marks his fish and takes it away. Invoicing is done at a later date.

I understand from the proposal, and from some of the concerns expressed by the industry, that the Executive's interpretation of the regulation—as opposed to any instructions it has received from Europe—is that paperwork will have to be completed by both the transporter and the salesperson for each sale or transaction. The paperwork from the salesperson, who is the auctioneer, will have to wait, as he will continue with his auction; he will not stop as soon as he has sold two or three boxes. That means that the transporter will have to wait until the auctioneer has completed his sales before up to a dozen pieces of paperwork are completed, but time is of the essence to the buyers, who must transport the fresh fish to the processors and the marketplace as soon as possible.

Given that the industry does not want more bureaucracy—and this proposal suggests a lot more bureaucracy to me—this measure is extremely unpopular. Are these requirements simply based on the Executive's interpretation of how the EU regulation should be implemented? Could it be that the documents that have to be completed do not have to be carried with the fish?

Mr Weatherston: We understand the concerns that have been expressed about the need for speed in the process of moving fish from market to processing factories or wherever. It is not the intention of the Scottish Executive rural affairs department or of our enforcement agencies to place obstacles in the way of that.

There are some uncertainties about the precise requirements of the transportation documents and we will work with the industry during the first few months of the application of the regulations to ensure that those requirements are clear.

We are more than willing to adopt a pragmatic approach to the implementation of that particular aspect of the regulation. If you do not object, convener, I will ask Mr Galbraith to comment on that, as he is closer than I am to the practical enforcement issues. We understand the problems but we think that perhaps people are misinformed, as we do not think that the proposal will cause

major problems. It is quite possible to get round the way in which the arrangements will operate.

Perhaps Mr Galbraith will advise members how we envisage the practical operation of the proposal. I am happy to say more about the policy issues if his explanation does not put members' minds at rest.

Mr Philip Galbraith (Scottish Fisheries Protection Agency): I should say first that these regulations relating to transportation documents are EU-wide—they are not simply a result of the Executive's interpretation of the regulations. I strongly recommend that any transporters taking fish to the continent ensure that they have documentation with them, so that they are not held up by checks and so on.

Mr Lochhead is quite right: there is no requirement to carry the documents with fish sold at auction which have entered the marketing chain. However, should fisheries inspectors from anywhere in the European Community inspect a lorry and suspect that the fish have been sold outwith the usual marketing route, they could insist on the production of documentation, so that they can trace the fish back to the source of origin.

For example, if, after auction, one were transporting fish from Peterhead to Holland for resale, one would not necessarily have to have a sales note from each fishing vessel. One would need only an invoice from the fish-selling agent to show that one had bought so many boxes of haddock, plaice and so on from that agent. The inspectors in Holland would be able to check with inspectors in Peterhead, who would, in turn, both check with the agent that he had documentation relating to the sale and trace the fish back to the vessels.

The process may not be as bureaucratic as members might think. During consultations with the industry, it was suggested that fisheries inspectors would be standing at Peterhead market, watching fish being loaded on to a lorry and asking for documentation when the lorry leaves the market. Our inspectors do not have time to do that, so the regulations will be applied very pragmatically.

Inspectors throughout the community think that it will be useful to be able to trace the origin of fish when they suspect that the normal marketing route is being circumvented. We hope that the regulations will be applied equally throughout the community, and I emphasise that anyone who has export markets on the continent should be careful that their documents are in order.

14:45

Richard Lochhead: I get the impression that

the Executive is being overzealous with this regulation, and that concerns me. Despite the fact that the regulations do not require transporters to carry documentation, you recommend that they do so, saying that it is in their best interests. The message from the industry is that carrying the documentation will make things much more difficult and it will not be in their interests to do so.

In any case, not all transporters go to Europe. I appreciate that some do, but many transporters from Peterhead fish market, for example, go to a processor in Aberdeen, or the Broch, or elsewhere in Peterhead for the fish to be filleted and then go on somewhere else.

Mr Weatherston: The regulation is quite explicit. It requires people to carry a transport document when fish is being moved before first sale. For fish that is being moved after first sale, the regulation requires transporters, if asked, to be able to prove with documentation that the fish has been sold. That requirement exists to prevent black fish from being moved around the country, and to prevent people—when they are stopped and challenged about the origins of that fish—from being able to claim that the fish has already been sold, so they do not have to account for it.

For fish that has been sold, it is quite clear that there is a requirement to prove that the sale took place on the basis of documentation. The documentation does not need to be carried. We are suggesting to the industry that to prevent any delays when people are stopped and challenged, it is in their interests to carry documentation. I have a great deal of difficulty in believing that lorry-loads of fish, worth tens of thousands of pounds, traverse around the country without any documentation to prove that the fish have been sold or to whom they belong. Most reasonable people in the industry would agree with that view.

Lewis Macdonald (Aberdeen Central) (Lab): I want to follow up on that. Richard Lochhead talked about the industry, but it is clear that different views exist within the industry. Would it be true to say that many people—in particular on the processing side, but also on the catching side—will welcome measures that will make it easier to identify the rogue elements who are sidestepping regulations in order to sell fish that has not been accounted for properly?

Mr Weatherston: That would certainly be my interpretation.

Lewis Macdonald: Has that been borne out by the submissions that have been received during the consultation process?

Mr Weatherston: Yes.

Alasdair Morgan: The compliance costs for Scotland are estimated to be about £300,000. Can

you give us any idea who will incur those costs, and why?

Mr Weatherston: Just under a third of those costs will be incurred by fishermen who, we estimate, do not complete logbooks because they are caught by an existing derogation. The vessels involved are those in the 10 m to 17 m range that go out to sea for less than a day. That derogation has been removed by the 1998 EC regulation, to fill a gap in the system.

The bulk of the other costs, which, to be honest, are probably pessimistic, are attributed to transportation costs and relate to the estimated requirements to carry or produce documentation in the case of fish that has already been sold. From recollection, that cost will be about £140,000 out of the £270,000 that we estimated to be the cost to the Scottish industry. That estimate assumes that there will be a transport documentation cost in relation to every landing, which probably errs on the pessimistic side.

Richard Lochhead: My final concern is about the powers of the sea fishery officers. Can you confirm that there has been a change to the paragraph that says

“the sheriff may by warrant signed by him, and valid for one month, authorise a British sea-fishery officer to enter the premises, if need be by reasonable force, accompanied by such persons as appear to the officer to be necessary”?

Lewis Macdonald: Where does that text appear?

Richard Lochhead: It is paragraph 7(3) on page 6 of the regulations. Am I right in saying that that would extend the category of those who have powers to obtain warrants—the police and Customs and Excise officers—to include fisheries protection officers?

Mr Weatherston: I understand that the powers of forcible entry under warrant were in the Sea Fishing (Enforcement of Community Control Measures) Order 1993, and were taken out for some reason, which I do not know, but have been put back in. The policy issue that lies behind that enforcement power is that it is relatively easy for records relating to businesses to be taken away from a particular place, such as a vessel, and held in another location, including someone's house, in order to stand in the way of proceedings or investigations in relation to illegal or illegitimate activity.

The power to forcibly enter premises is designed to get round that problem. It is a power that exists in other agricultural legislation to enable access to places when people refuse entry to, or make life difficult for, the enforcement authorities when trying to gain access to material or information. Of course, the power is exercisable only under the authority of a sheriff, so it is subject to appropriate

scrutiny.

Richard Lochhead: I am slightly concerned. The department will appreciate that the vast majority of fishermen are honest people trying to make an honest living. To find that a sentence sneaked through in European regulations extends the powers to obtain warrants from the police and Customs and Excise to another service has implications for civil liberties, and for the atmosphere in the industry. Has that measure come from Europe as well? Surely not. Did it come from a unilateral decision by the Government?

Mr Galbraith: The powers of British sea fishery officers stem from the powers contained in the Sea Fisheries Act 1968 and the Sea Fish (Conservation) Act 1967. The order is made under section 30 of the Fisheries Act 1981, which allows any powers and penalties contained in the 1967 and 1968 acts to be applied within any necessary modification to any order that brings into force a community obligation. The powers are available under primary legislation, namely, the fisheries acts.

Richard Lochhead: Can I ascertain for the record, with a yes or no answer, whether this new aspect to the control regulations was in the regulations that this order follows on from?

Mr Galbraith: As my colleague said, the power was contained in the 1993 control order, but when the current control regulation came into force on 1 January 1994, a new 1994 order, a copy of which I have here, came into force, and the provision was dropped, for whatever reason, from that order.

I do not know why the provision was dropped. It may have been overlooked, or it may have been felt that it was a power that we rarely, if ever, used in our inspections at that time. However, because more information is being held on computers, and it can be transferred easily from offices, it may have been felt that the information could be hidden more easily, and that it might be necessary to obtain warrants from time to time to conduct investigations. That is because some people are obstructive when requested to provide documents.

Alasdair Morgan: So this is a power that you have lacked for the past five or six years. Has that been a problem?

Mr Galbraith: It has not been a problem in Scotland.

The Convener: Are there any further questions?

As there are not, I thank Mr Weatherston and Mr Galbraith and invite them to withdraw from the table.

This instrument is laid under the negative procedure, which means that unless a formal motion to annul the order is agreed to, the order

comes into effect. No such motion has been lodged to date, so the purpose of today's discussion is to examine the instrument.

Are members content that they have enough information to make a decision on this instrument?

Members indicated agreement.

The Convener: As members are content, can we conclude that the committee does not want to make any recommendation in its report to Parliament?

Alasdair Morgan: Could we have a wee bit discussion about this? My point does not relate to just this order, as I have seen pieces of legislation like this for a couple of years. It seems that every piece of legislation contains more and more power for more and more people to gain access to premises. This committee will not want to roll back the frontiers of the state totally, but I wonder why this provision is being introduced, given that it has not been in place for the past six years and there does not seem to be substantial evidence that it is necessary? Computers have been with us for a few years and there has not yet been a problem. Why are we anticipating this problem by granting powers to apply for a warrant? I see in the regulation that one would have to apply on oath to the sheriff and so on, but is this step necessary? What are the views of other members?

Alex Fergusson: I understand that concern, but I note that similar provision is being made for enforcement orders in England and Northern Ireland as well. Will that measure be included in the legislation that is proposed in England and Northern Ireland?

Alasdair Morgan: It depends what our counterparts do in their committees.

Alex Fergusson: I would be very unhappy if the provision applied only in Scotland. I do not have a problem with it if similar legislation is proposed elsewhere.

Lewis Macdonald: This is a red herring, given that there appears to be general provision for these powers and that there legal safeguards. The idea that giving powers of access to sea fishery officers to enforce fishery regulations is a threat to civil liberties strikes me as extraordinary. Sea fishery officers are professional people doing what anyone who knows the fishing industry will acknowledge is sometimes a difficult and highly pressured job. The powers that this instrument gives them to deal with the unlikely but conceivable circumstance in which they need access to premises other than a boat or fishing office seems uncontentious.

Richard Lochhead: As members from every party said in the recent fisheries debate, there is a concern that the UK Government and now the

Scottish Executive have been overzealous in implementing European regulations on their own fishing industry, which has led to additional bureaucracy and expense.

One would hope that the Executive will not seek to impose unilaterally regulations that will add to those that are coming out of Brussels. I oppose the instrument because of my concerns about the requirement for transportation documents and the extension of warrants to sea fishery officers. These are unilateral regulations for which we have received no justification.

The Convener: Although the parliamentary structures do not allow the committee to amend this instrument, any committee member or MSP who is concerned about it can choose to move that the instrument be annulled.

Richard Lochhead: So our only option is to move for annulment.

The Convener: Yes.

15:00

Richard Lochhead: Or to seek further information.

The Convener: Well—

Richard Lochhead: What is the time scale?

The Convener: We have until 22 February, which is the end of the 40-day period from the laying of the instrument. Any MSP can lodge a motion to propose to the lead committee that the order be annulled. If we cannot report to the Parliament that we are content with the instrument at this stage, we could consider any formal motions that are lodged at a meeting arranged for that purpose. Is that how the committee wishes to proceed?

Richard Lochhead: Say that once more. *[Laughter.]*

The Convener: The alternative to reporting to the Parliament that this instrument be accepted is to allow the committee to consider any formal motion that might be lodged before 22 February.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Is that strictly necessary? As you have pointed out, convener, it is open to any MSP to lodge a motion for annulment. To date, no motion has been lodged. If Richard feels very strongly about the issue, it is up to him to lodge a motion and take it from there.

The Convener: The simple question that I asked before and will ask again is whether members are content with the proposed legislation.

Richard Lochhead: No.

Lewis Macdonald: Yes.

The Convener: If so, can we conclude that the committee does not wish to make any recommendation in its report to Parliament?

Alasdair Morgan: One member has indicated that he is not content.

Alex Fergusson: And I would like to find out the answer to my question about whether the legislation will be introduced everywhere else before I say yes or no.

The Convener: The appropriate way to deal with this problem is to carry over this item to our next meeting, which will allow anyone who wishes to lodge a motion to do so in the intervening period. We can deal with the matter at our next meeting.

Lewis Macdonald: Is that necessary?

The Convener: We have little alternative if members are not content to allow the instrument to go ahead. The time scale for dealing with it allows motions against it to be lodged.

Mr Rumbles: So far, only one committee member has said that he is not content to let the instrument go ahead—not the committee itself.

Alasdair Morgan: We must have a vote.

Richard Davies (Committee Clerk): If the committee concludes now that it is content to allow the order to proceed, a motion giving possible grounds for objecting to it could still be lodged in a week's time. The committee might be left in the awkward position of deciding whether to take that motion and debate it, despite having previously decided to let the order proceed.

If a motion for annulment is lodged, the minister has the right to attend to present his case in support of the order.

Mr Rumbles: In that case, what is the point of examining the instrument now? Why do not we examine it in February? This is a procedural issue.

Richard Davies: We bring such instruments to the committee as soon as possible to enable members to have as much time to question officials and gather as much information as they can. If members are clear that they want to proceed without considering annulment, they can do so. If they are in any doubt, they have the option to wait to find out whether a motion for annulment is lodged. Members can, if they wish, reconsider the matter in the future.

The Convener: That is the position in which we appear to be at the moment.

Alasdair Morgan: Even if we had agreed unanimously, would it still be open to a member to lodge a motion for annulment up to the final date?

The Convener: Yes.

Alasdair Morgan: Is not it also possible for the committee to lodge a motion for annulment, if all members agree? Must that be done by a member?

Richard Davies: The committee could consider a motion in the name of the convener.

Alasdair Morgan: If a member lodges a motion for annulment, must that come to the committee?

Richard Davies: There is a little doubt about that. I will take further advice on the matter. The committee might come to a conclusion on an instrument such as this and, subsequent to that discussion, another member—not a member of the committee—could lodge a motion for annulment. There might be circumstances in which the committee might not want to consider that motion.

Rhoda Grant (Highlands and Islands) (Lab): Where would such a motion be considered? If a member lodges with the Parliament a motion for annulment, how is that dealt with?

Richard Davies: We will look into this more closely. Some weeks have passed since the matter was raised. If the committee did not want to consider it, the motion would die.

Lewis Macdonald: Does that mean that if the committee is content with an instrument, it is for the committee to decide whether to have further discussion of an individual member's motion for annulment or simply to set it aside?

Alasdair Morgan: Presumably the bureau can select motions for annulment.

Richard Davies: Yes.

Richard Lochhead: I suggest that we postpone a decision on this instrument on the basis that the committee wants to give members an opportunity to lodge a motion for annulment. Would it be in order for the clerk to provide us with a guidance note on the options that are available relating to motions of annulment?

Alex Fergusson: It seems rather messy that we can approve this instrument when any member can until the final date lodge a motion for annulment. It makes perfect sense to have it all explained to us today and to discuss it. Would not it make sense, therefore—for this and for subsequent similar instruments—to discuss it, but agree to postpone approval until nearer the final date? That would allow members to lodge motions if they so wished.

The Convener: That could be extremely messy as well.

Alex Fergusson: It would not be as messy as

having to annul a motion that had been passed.

Mr Rumbles: That is a more logical approach.

The Convener: How do members wish to proceed? Should we continue consideration of the instrument at the committee's next meeting?

Alasdair Morgan: That will not stop anything happening.

The Convener: Does that meet with members' approval?

Lewis Macdonald: Would it be appropriate for the committee to take a view, having heard evidence from the officials? There are, are there not, different stages in this process? Is it not appropriate for the committee, as lead committee, to take a view? We have not expressed concern with the instrument. Is that not something we can formally record at this stage, regardless of whether we are obliged to reopen the matter if a motion is lodged before our next meeting?

Mr Rumbles: I am slightly concerned that we may send out the wrong message if we do not approve the order. So far, only one of us has voiced concerns about it.

The Convener: I would be concerned if the committee's failure to approve an instrument was interpreted as meaning anything other than that a decision had been deferred until a subsequent meeting.

Richard Lochhead: I cannot see any difficulty with our making a decision on the instrument at a later date.

Lewis Macdonald: There is no particular reason to delay. As has been noted, no motion has been lodged and we have no formal way of deducing whether one will be lodged. There is no affirmative procedure. We are not asked positively to endorse the regulation, but to comment if we have an objection. We have no objection, and we should record that formally today on the basis of today's discussion. If a motion is lodged by an MSP, that is a separate stage in the process. This is our opportunity to negate the regulation. If the committee does not wish to take that opportunity, it should say so.

The Convener: That is not really what we are talking about. We are analysing the situation and considering the opportunities that have been provided to those who wish to object to the order. There is still time for someone who wishes to move for its annulment to do so, and individual members of the committee have indicated that that may happen. Do we want to make a decision based on the limited information that we have at present?

Mr Rumbles: I would like to support Lewis Macdonald's comments. By not getting on with

this, we are in danger of encouraging MSPs to lodge a motion when no such motion is before Parliament. That would send out the wrong message. If a majority of committee members believe that we should proceed with this, we should do so.

Alasdair Morgan: If there are no problems with a statutory instrument, what is our normal procedure? Do we report anything at all if we are happy with it?

Richard Davies: The committee is obliged to report to the Parliament on whether it wishes to make any recommendation. The report would normally read that the committee wishes to make no recommendation to the Parliament.

Richard Lochhead: Can I clarify whether the only other recommendation that we can make to Parliament is to annul the order?

Richard Davies: The committee can do that only if a motion has been lodged. No motion has been lodged, so no decision to seek annulment could be taken today.

Alasdair Morgan: Could we decide to lodge a motion, if we were so minded?

Richard Davies: Yes.

Lewis Macdonald: Equally, can we make a report today in which we say that we have no recommendation to make in his matter, having considered it, but that it is open to us to make a recommendation at a later stage? I am not suggesting that we should do that. I want simply to ensure that we are clear about the technicalities.

Richard Lochhead: I have one final point, which may clear this matter up. There are department officials here to whom we can put questions. If we are not satisfied with their answers, are we expected to have a motion in our back pocket that we can simply take out and present to the committee?

The Convener: As Richard Davies said, any motion would, like any other motion, have to be lodged with the chamber desk. That is why I still feel that given that questions have been raised, it would be appropriate to consider a motion for annulment at the next meeting.

Rhoda Grant: There is no point considering the matter twice if there is no motion for annulment. If we make a recommendation today, we can be finished with the matter. If, however, there is a motion, we can consider it again next week. I do not think that we are saying that we will never consider the issue again, but it saves the matter appearing on the agenda again if there is no motion.

Richard Lochhead: I support your view, convener, that we postpone discussion until the

next meeting to give members the opportunity to lodge a motion. There is no point having the opportunity to ask department officials questions if we have prejudged the situation.

Rhoda Grant: The situation does not affect Richard Lochhead's right or ability to lodge a motion. If he does lodge an amendment, it will have to come back to the committee. However, once he has had a look at the order, he might decide not to lodge a motion. If we postpone the matter, we will have to speak about it at the next meeting regardless. We need to tidy things up and make the issue easier to deal with. If Richard Lochhead lodges a motion, we will speak about the issue twice; if he does not, we will not.

Richard Lochhead: If we do that, the motion will have to be lodged before we can hear what the department says in response to our concerns.

15:15

Rhoda Grant: Sorry. I did not realise that we were putting anything to the department. I thought that we were going to postpone the matter to see whether a motion was lodged. I am at odds then.

Richard Lochhead: Members may want to hear what the department says in response to concerns before deciding whether to lodge a motion.

Lewis Macdonald: We have heard what the department has to say and are in a position to make a judgment on that.

Richard Lochhead: We will have to put it to a vote.

The Convener: Okay. The motion is, that consideration of the Sea Fishing (Enforcement of Community Control Measures) (Scotland) Order 2000 be continued at the next meeting. Who moves the motion?

Richard Lochhead: I move the motion.

The Convener: The vote will be done by roll call. When I call out members' names, they should say yes if they support the motion and no if they do not. Members may, of course, abstain.

Alex Fergusson: I want to ask a question before I vote.

Is it correct that the only decision that this committee will ever have to take on this instrument is not to make any recommendation to Parliament?

The Convener: After the vote takes place, the committee will be required to debate a motion for annulment if one is received before the next meeting.

Members voted by roll call.

FOR

Fergusson, Alex (South of Scotland) (Con)
 Lochhead, Richard (North-East Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
 Johnstone, Alex (North-East Scotland) (Con)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine)
 (LD)

The Convener: The result of the division is: For 4, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: As a result of that decision, does the committee agree not to make any recommendation to Parliament, remembering that there is still time for something to be done on this issue?

Members indicated agreement.

Beef Bones (Scotland) Regulations 1999 (SSI 1999/186)

The Convener: The Rural Affairs Committee has been named as a secondary committee to consider the Beef Bones (Scotland) Regulations 1999 (SSI 1999/186); the Health and Community Care Committee is the lead committee. The regulations arise under the negative procedure, which means that unless a formal motion to annul the order is agreed, it will come into effect. No such motion has been lodged to date, so the purpose of today's discussion is to examine the instrument, which will inform the report that we will make to the Health and Community Care Committee.

Two explanatory notes are attached to this Scottish statutory instrument. The first is from the clerks; it sets out the dates. The second is from the Scottish Executive rural affairs department; it was provided at our request and explains the order. A third note at the end of the instrument appears at the end of all subordinate legislation. We have not asked any officials to attend for this discussion. Are there any comments?

Mike, you are not encouraging Alasdair, are you?

Mr Rumbles: No.

The Convener: Are members content with the proposal? Can we conclude that the committee does not wish to make any recommendation?

Members indicated agreement.

Amnesic Shellfish Poisoning Report

The Convener: Item 7 on the agenda is consideration of the Executive's response to this committee's report on amnesic shellfish poisoning. Members should have a copy of the response and a paper from the clerk comparing it with the committee's original recommendations. The papers were circulated on Friday.

The committee should decide whether it wants to accept the Executive's response. Are there any comments?

Richard Lochhead: I was quite disappointed in the Executive's response. All it really says is, "Thanks very much for your report—we'll be talking to the industry about these matters." I do not think that that acknowledges the importance of the issue. I would be interested to hear the opinions of other members. We raised several issues, which have been addressed to some degree in the Executive's response.

Lewis Macdonald: The one thing that I would agree with in Richard's response is that the most important thing was the Executive's recognition of the importance of talking to the industry about the issues that we have raised. One of the key things that we pointed out in our report was that communications could have been improved to overcome some of the difficulties that have arisen in the shellfish industry. A full meeting has been scheduled for tomorrow to bring together the department, the scientists and the industry. That is positive.

We raised a number of issues, and they have been addressed to some degree in the Executive's response. I am encouraged by the Executive's willingness to consider closely the question of end-product testing, which is one of the industry's key demands. As well as monitoring the existing difficulties, there should also be proactive research into the fundamental causes of ASP and other shellfish toxins. This point certainly covers that and indicates that on-going long-term research programmes are examining those matters.

My final point refers to paragraph 9. The Scottish industry was keen to raise the question of which part of the scallop should be tested to establish toxicity. It is clear from that response that the matter has been taken up at the appropriate level in the European Union. In order to make progress, the Scottish industry must have a level playing field with the Irish industry and other shellfish producers. Going through the European Union is the appropriate way to achieve that. Again, the fact that ministers have taken that up is to be welcomed.

Dr Elaine Murray (Dumfries) (Lab): I wonder whether I have read the same letter as Richard Lochhead has. The letter that I have had does not say, "Thanks very much for your response, full stop." It does not elaborate specifically on the need for better communication, but it is clear from the way in which it is written that the need for that is implicit.

The letter does not commit the Executive to allocating extra funding to research. However, it tells us about a research project investigating the factors that affect the growth of algae and influence their toxicity. That is a project of which I, for one, was unaware. The money may already have been allocated, but we should welcome the fact that that research is being conducted. The industry was worried about a possible link between fish farming and the growth of toxic algae, so we should welcome the paper and monitor the results of the research. We should encourage the Executive to communicate those results to the industry.

Richard Lochhead: I welcome many of the points in the letter, which is informative. However, it does not say whether it accepts or rejects this committee's recommendations, which is the response that we wanted. For that reason, I consider the response to be a bit of a fudge. We should ask the Executive again whether it accepts or rejects the recommendations that we have made.

Lewis Macdonald mentioned testing. We were told that a meeting is taking place in Europe and that the Scottish Executive will be keeping a close watch on developments. However, we do not know the Scottish Executive's view. Does it have a view? Does it have any input to that committee to convey its views? We do not know.

Alasdair Morgan: I have some concerns about the time scale for discussing the part of the animal that is to be tested. It has been suggested that the committee will consider the matter in March. As we know, once things get into the European circuit, it can take a long time to achieve any result. The industry is concerned because, if one tested the bit of the shellfish that is going to be sold, it would clearly be edible under the regulations.

It is only because the whole shellfish is being tested, or because bits are being tested that might in some circumstances be eaten but which would not be eaten in the circumstances in which the suppliers plan to sell it, that the toxin levels are over the limit, leading to the product being banned. The matter needs to be dealt with quite quickly, because what would otherwise be edible products cannot be sold. More accurately, a whole area of the industry is being put off limits. The fishermen want to fish and sell a product that is edible within

the regulations.

15:30

Rhoda Grant: I agree with what Alasdair Morgan said. Unfortunately, one edible part, the roe, tends to be toxic, but the white muscle does not. That is where the problem is coming from. I think that the problem could be easily overcome if people were not allowed to sell the roe but were allowed to sell the white muscle. We should follow that up urgently. A move to end-product testing of the white meat would allow fishermen to sell it and would alleviate some pressure. We could do that temporarily. I have concerns about testing only the end product as that would affect the live market. We have to find a crossover between end-product testing and testing as it is carried out just now. A decision on that cannot be made overnight but we need to ask for fishermen to be allowed, temporarily, to sell the white meat and for it to be tested as an end product.

Alex Fergusson: I back up what Rhoda and Alasdair said. Ireland dealt with a similar situation by coming up with a speedy method of end-product testing that has been greatly to the benefit of their scallop fishermen. The March date shows that the situation is not being treated as a matter of urgency. I feel that a more speedy response would be welcomed by all.

The Convener: The response that we have received, while it goes down the road of what we want, does not go as far as I would have liked, nor into as much detail. Do we think that it would be appropriate to ask the minister for clarification on a number of issues and highlight issues on which we want progress made within the terms defined in the report?

Rhoda Grant: We do not need clarification; we need urgent action in regard to end-product testing.

Irene McGugan (North-East Scotland) (SNP): Time frames are an issue and we need clarification of the issue. There are also two areas on which the Executive did not respond at all. It should be stressed to the Executive that the committee feels strongly about extra resources and compensation. The answers that we have are inadequate.

Lewis Macdonald: I am sorry, Irene, could you repeat the last point?

Irene McGugan: The committee recommended strongly that resources should be made available for a compensatory mechanism. The answers that we received are not clear. There is mention that it might be possible to examine the issue under the new structural funds. Guidance on that would be useful. Also, there is no mention of resources

going into testing at the Marine Laboratory.

Lewis Macdonald: We should welcome the minister's response. It is important to recognise the important and useful things in the report. However, we should say that there are two or three areas in which we would like more detail and a clearer indication of the Executive's view. For example, it would be useful to have more information on end-product testing, on testing of parts of the animal and on the criteria under which Food and Environment Protection Act 1985 regulations are brought forward. I would ask the convener to respond in those terms, rather than reopening all the many questions that have been largely answered.

The Convener: Would it be appropriate for me to write, on behalf of the committee, to the minister, highlighting some of the issues that have been raised?

Members *indicated agreement.*

The Convener: As different members have different ideas about priorities, I would make sure that a couple of members see the letter before it is sent out. Perhaps we can nominate a couple of members to do that—I suggest Lewis and Alasdair.

Lewis Macdonald: That is fine.

Alasdair Morgan: Okay.

Correspondence

The Convener: As members will have noticed, a large amount of paper has descended on us, containing several items that we thought should be circulated before Christmas. One or two items on the list appeared after Christmas. We may wish to consider the items at subsequent meetings. The papers have been circulated to allow members to prioritise items so that we can decide what should be put on the committee agenda in the near future.

We have received replies from the minister on the position of the French Prime Minister in regard to beef exports. We have also received: the Executive statement on infectious salmon anaemia, which the committee requested; a European document relating to the common agricultural policy; a paper on the EC approach to forests and development; an Executive consultation paper on the draft Scottish plan for rural development regulations; a consultation paper on agricultural wages in Scotland; and a consultation paper on the proposal for use of article 4 of EU regulation 1259/99, to recycle money into the new rural development regulations. Which of those items do members feel should be high on the priority list?

Cathy Peattie (Falkirk East) (Lab): We might want to consider some of those items, particularly the paper on agricultural wages in Scotland, in the context of the review of changing employment patterns.

Irene McGugan: I do not disagree with that but, as some items are consultation papers, there will be a cut-off point for making suggestions. That may direct our priorities.

The Convener: Are there any other comments?

Alasdair Morgan: That is sensible. If we are going to consider an item that has a deadline, we should do so well before that deadline.

The Convener: Do you have any views on the statement that we requested from the Executive on infectious salmon anaemia?

Richard Lochhead: There is not much to add, because we have discussed this matter in Parliament. I am happy to welcome the new flexibility.

The Convener: Were we satisfied with the minister's reply to our letter inquiring about the comments of the French Prime Minister?

Alasdair Morgan: That might be pushing it a bit far, but I do not think that I want to discuss it further at this stage.

The Convener: In that case, we will prioritise the consultation exercises and bring them into the committee's programme in good time for us to contribute to that process.

Are there any further comments on the items on the list?

Irene McGugan: We did not really decide what to do with items 3 and 4, which are not consultation papers as such. I do not know whether it is appropriate to consider the European document on forests and development around the time that we consider the strategy for forests in Scotland.

The Convener: We are expecting to discuss the forestry document at our meeting of 14 March. It is likely to be published towards the end of February.

Irene McGugan: It might be appropriate to have a substantive item on forestry around that time.

Lewis Macdonald: I do not disagree with that in principle, but I think that the document to which Irene McGugan refers relates more to forestry overseas than to European forestry as such. It is an international development paper. It will be interesting, but it will not necessarily form part of our discussion of forestry strategy in Scotland.

The Convener: If there are no comments, that concludes item 8.

Pig Industry

The Convener: Members will have received a copy of the reply from the Minister for Rural Affairs and a note from the clerks outlining the informal briefing session held with representatives of the pig industry.

I understand that this afternoon the Public Petitions Committee decided that this committee should deal with the petition on the pig industry that the National Farmers Union submitted last week. It may be appropriate for us to consider the contents of that document at this time.

I think that most of us were present when we consulted representatives of the pig industry. We have a note of the meeting that sets out details of the discussion that took place there.

As I said, we also have the minister's reply to the letter that we sent asking for clarification of a number of issues. Are there any comments on that letter?

Richard Lochhead: I do not expect that the pig industry will be too happy with Ross Finnie's reply to the committee. It does not tell us whether he has met Franz Fischler. I know that the letter is dated 21 December, but this committee still has to find out whether the minister has made the effort to speak directly to Franz Fischler in connection with the crisis in the pig industry.

One of the aims of the committee's letter was to clarify the situation on state aid, but that remains vague. The letter includes statements such as

"Community rules might permit the payment of a State Aid in this general area".

The committee may want to address that point.

Alex Fergusson: That is particularly relevant to the letter that I received this morning, via Ben Gill, the president of the English National Farmers Union, from Franz Fischler. While the letter does not say, "Come and get it", it suggests that there are routes that could be explored that have not been. The point is that we need to know, on behalf of what is left of the Scottish pig industry, that the Minister for Rural Affairs has gone the extra mile in defence of that industry. At this stage, I am not convinced that he has done so. In his responses to this committee, to questions in the chamber and to written questions, we have yet to receive a definitive answer to the questions, "Have you been to see Franz Fischler?" or, "Have you been to see Gordon Brown?" We must have that answer, as must the pig industry in Scotland.

15:45

Alasdair Morgan: I agree. If one compares the two letters—that is, the letter from Franz Fischler

to Ben Gill and the letter from Ross Finnie to the convener—the minister's letter is far more pessimistic than Mr Fischler's letter. Perhaps Mr Fischler can afford to be more optimistic in his letter to Mr Gill as he is not committing himself to anything. However, we must be sure that our ministers have explored with the commission all the possible chinks in the system that Franz Fischler has opened up in his letter, and that they have tried to pin him down to see whether there is any mileage in them. I am not convinced that those avenues have been completely exhausted.

Lewis Macdonald: The issue is not about who has met whom; it is about whether there is a mechanism available, as Alasdair just suggested, for state aid payments to be made that are not unlawful. The minister's letter is not encouraging in that respect. I am particularly concerned about his suggestion that, because both the meat and bone meal ban and the animal welfare provisions have been in place for some time, it is difficult for those issues to be considered as exceptional occurrences, which he cites as the key to opening the door to state aid.

I want us to go back to the minister on that point, to establish whether other routes have been explored and whether there are any grounds for claiming exceptional occurrence. On the two points on which the industry is seeking support, it does not seem to me that either offers an exceptional occurrence or event that has happened in the last few months that did not apply in the previous year. However, some suggestions have been made and there should be room for exploration.

The Convener: Would it be appropriate for me to write to the minister again and to attempt to keep the questions that we are asking very simple, in an attempt to solicit simple answers?

Richard Lochhead: We should add a question seeking details of what contacts have been made. There are many references in the letter and elsewhere about the Executive's informal contacts and other contacts. It would be useful to know who has been making those contacts.

For the committee's information, I received a letter from Franz Fischler dated 15 December, which arrived only at the weekend, in which he confirms that he has not received any formal notification of proposals for grant aid from the UK. That is a further indication that no proposals have been presented and therefore we have not had an official response.

Rhoda Grant: The minister's letter refers to formal and informal contacts.

Lewis Macdonald: I still contend that the critical issue for this committee is not who met whom and when, although that may be of interest to

members. As far as the committee is concerned, we are trying to find a mechanism through which we can establish whether funding can be provided to the British pig industry. In your reply to the minister, convener, it would be worth focusing narrowly on the specific points where we hope progress can be made.

The Convener: I wish to raise a concern at this point, to seek members' comments. A significant number of letters have been produced in offices in Brussels and elsewhere in the European Union in response to communication from various organisations and individuals in this country. Has it come to the point where it would be appropriate for the committee to write directly to the European Union, to ask those same simple questions?

Lewis Macdonald: I would far rather go on what the European Commissioner for Agriculture and Fisheries says to us than on what he says to other people.

The Convener: The questions should be simple and should deal with whether support for the pig industry constitutes state aid. Richard Davies was asking whether anyone has copies of the many letters that have been circulated. It would be interesting to correlate them, to establish the appropriate line of questioning in that letter.

Moving on from the letter, if there are no further comments—

Alex Fergusson: Do you want those correlated questions given to you, so that you can—

The Convener: Pass me copies of any relevant communication, so that it can be used for that purpose.

Does anyone have any comments on the broader issues? The committee has had an informal meeting with representatives of the pig industry. In the course of the past month, many of you have had contact with those representatives and with individual farmers. Does anyone have any comments on that?

Richard Lochhead: The only comment that might be worth adding relates to the well-attended rally in Edinburgh on our first day back after the recess. The committee should recognise that the pig industry was at the top of the agenda there.

The Convener: That takes us neatly on to the petition on the pig industry, copies of which have been circulated. Does everyone have a copy? This afternoon, the Public Petitions Committee decided to pass the petition to this committee for consideration. How should we proceed in dealing with this petition?

Lewis Macdonald: The petition covers the same ground as we covered in our discussion with the minister. We should forward it to the minister

with our letter, drawing his attention to the strength of feeling on the matter and the specific area in which the industry is seeking support. Whether the petitioners' requirements are met will be determined by the judgment that is reached on whether state aid can go ahead.

The Convener: Is it the committee's view that, given the terms set out in the petition, it would be appropriate for us to offer our support?

Alasdair Morgan: It might be more appropriate to show the petitioners a copy of the letter that we are writing to Franz Fischler. We are exploring ways of getting assistance to the industry—whether that corresponds with what they are asking for is neither here nor there, as long as we can find some way of achieving our aim. That might be more helpful than to say that we are supporting their aims, only to get a letter from Franz Fischler saying that that is a total non-starter.

The Convener: In the meantime, would it be appropriate for us to write letters to Ross Finnie and to Franz Fischler in support of the pig industry, to consider the petition in the light of the replies we receive and to decide how to proceed in support of the industry?

Members indicated agreement.

The Convener: If there are no other comments on this matter, that brings us to item 10 on the agenda, concerning the appointment of an adviser for the investigation into changing employment patterns on rural communities. In the past, we have taken this item in private. I propose that, with the approval of the committee, we deal with it in private now.

15:55

Meeting continued in private until 16:12.

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