

# **RURAL AFFAIRS COMMITTEE**

Tuesday 12 September 2000  
(*Afternoon*)

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## RURAL AFFAIRS COMMITTEE

24<sup>th</sup> Meeting 2000, Session 1

### CONVENER

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

### DEPUTY CONVENER

\*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

### COMMITTEE MEMBERS

\*Alex Fergusson (South of Scotland) (Con)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Richard Lochhead (North-East Scotland) (SNP)

Irene McGugan (North-East Scotland) (SNP)

\*Des McNulty (Clydebank and Milngavie) (Lab)

\*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:

Ross Finnie (Minister for Rural Affairs)

Mr John Home Robertson (Deputy Minister for Rural Affairs)

Mr Jamie McGrigor (Highlands and Islands) (Con)

Tavish Scott (Shetland) (LD)

### WITNESSES

David Cassidy (Scottish Executive Rural Affairs Department)

Charlie Greenslade (Scottish Executive Rural Affairs Department)

### CLERK TEAM LEADER

Richard Davies

### SENIOR ASSISTANT CLERK

Richard Walsh

### ASSISTANT CLERK

Tracey Haw e

### LOCATION

Committee Room 1



## Scottish Parliament

### Rural Affairs Committee

*Tuesday 12 September 2000*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:01*]

**The Convener (Alex Johnstone):** Good afternoon, ladies and gentlemen. I am sorry that we had to wait, but we were all here a little early, which is unusual for this committee. We have just heard the bells of the clock chime, so we know that it is 2 o'clock. We will take this opportunity to begin.

I have received apologies from Irene McGugan. Are there any other apologies? If not, we will continue.

### Seed Potatoes (Scotland) Regulations 2000 (SSI 2000/201)

**The Convener:** Item 1 on the agenda is subordinate legislation. We have before us the Seed Potatoes (Scotland) Regulations 2000 (SSI 2000/201). I remind members that it was agreed at the previous meeting that, as a precaution, I would lodge a motion to annul—under rule 10.4 of the standing orders—on behalf of the committee. That will enable us to take action based on the Subordinate Legislation Committee's report, within the time scale that is allowed.

Before we deal formally with the motion, I have invited officials to explain the issues surrounding the instrument. According to procedure, it is not possible for officials to contribute to a debate on a motion to annul. I therefore propose to take time to have the issues explained and to question officials. After that, I will move the motion in my name and will allow the Minister for Rural Affairs to address the motion.

Who will explain the issues?

**The Minister for Rural Affairs (Ross Finnie):** I will start, if I may, convener. Thank you for inviting us. I hope to give the committee such explanations as it requires. We take very seriously the issues that have arisen in the course of the committee's deliberations.

Before I start, I apologise in advance to the convener and members of committee if I do not manage to make eye contact. I regret that I appear to have developed an eye infection and the lights are making it rather difficult for me. What I am trying to express—in the nicest possible way—is

that I am not looking shifty; I am, rather, impeded.

David Cassidy will be best placed to address the committee's principal technical concerns, most of which were of a legal nature.

**David Cassidy (Scottish Executive Rural Affairs Department):** The Executive is grateful for the attention to detail that the Subordinate Legislation Committee has shown in reviewing the regulations—we consider them to be extremely important and significant. I propose to address the issues according to the Subordinate Legislation Committee's report.

Members will note that the Subordinate Legislation Committee drew attention first to a number of textual inconsistencies and typographical errors in the regulations. It goes without saying that those errors and inconsistencies are regretted. Members will appreciate that mechanisms that attempt to eradicate such errors are built into the process of formulation and making of regulations. It is extremely unfortunate that on this occasion, those mechanisms have not caught all that we hoped or expected they might in removing textual and typographical errors.

That said, the errors that were recorded by the Subordinate Legislation Committee are, for the most part, in the regulations' road signs—in their headings—rather than in the text. In the ordinary course of events, the Stationery Office will correct some errors, such as the omission of forward slashes and so on, in the published edition.

On the more substantial points that were raised by the Subordinate Legislation Committee, it appears that members focused on three regulations. The first is regulation 3, which relates to the application of the regulations—it is the entry door to the regulations. Secondly, that committee focused on regulation 9, which is concerned with labelling seed potatoes. Thirdly, the committee focused on regulation 20, which is concerned with an amendment to the Plant Health Order 1993. The committee also mentioned in passing regulations 6 and 7, but as members appear to be satisfied that they are legally sufficient, I do not think that there is a live issue as far as those regulations are concerned.

On regulation 3, the Subordinate Legislation Committee identified a defect in the drafting—which, it is acknowledged, could have been improved. That committee focused on the latter part of the regulation, which is concerned with authorisations. The authorisations remove marketing of seed from the regulations, but do not apply in the case of potatoes that are used for scientific investigation.

In short, while the rural affairs department is grateful to the committee for identifying that issue,

and while we acknowledge that the drafting could have been improved, the point that was raised is of academic interest. Those provisions have a very short life expectancy and are extremely unlikely to see active service. They will be swept away in the coming months by provisions that will be made in the implementation of an anticipated European Community decision. One can expect that those regulations will not come before a court.

The Subordinate Legislation Committee then turned its attention to its concerns about regulations 6 and 7. It appears to have satisfied itself on those concerns, which are no longer live issues.

On regulation 9, which deals with labelling, the committee had concerns about improvements in drafting, which we acknowledge. I mentioned the opportunity to sweep away that part of regulation 3 that caused the committee concern. That opportunity could also be used to lodge amendments, which, we hope, will address and remove the Subordinate Legislation Committee's concerns about regulation 9. Those concerns are about clarification—we hope to provide that additional clarification.

Regulation 20 amends the Plant Health Order 1993. It must be said that there is a divergence of views on this point. The Subordinate Legislation Committee takes the view that regulation 20 is plainly ultra vires. The Executive's position is that there is an overlap of power in regulation 20: it is a seed potato regulation, and the Plant Health Order 1993—which is amended by this provision—deals with plant health.

I invite members to consider whether there is an overlap between seed purity, seed health and plant health.

The nub of the matter is whether it is open to Parliament under a power in the Plant Varieties and Seeds Act 1964—under which these regulations are made—to make a supplemental or incidental amendment to the Plant Health Order 1993. The Executive's view is that it is. That view is based on the fact that the amendment is not substantive. The committee will agree that the provision being changed is a substantive provision—there is no dispute about that. However, the Executive feels that to consider the matter that way is to ask the wrong question. The question that the Executive asks is whether the changes being made to that substantive provision are themselves substantive.

The first change that is being made is to substitute a reference to the new regulations for a reference to the old regulations—the regulations that are being replaced by the new regulations. The second change is that a reference to Scotland should be substituted for the reference in the Plant

Health Order 1993 to a

“protected region of Great Britain”.

That is to take account of devolution. We are making seed potato regulations on a Scotland-only basis for the first time—that has a knock-on effect on the Plant Health Order 1993. The wording of the power in the 1964 act asks whether a change is necessary or expedient. It was considered necessary or expedient to make this incidental change to update the provision of the 1993 order. In effect, we gave it a new suit of clothes, but the shape underneath those clothes is the same.

The committee is faced with divergent views. I therefore ask members to note my point that the change to the regulation is not substantive, and to note that the issue has a short life expectancy, because consolidation of the Plant Health Order 1993 is being prepared. That task is quite close to the heart of the Subordinate Legislation Committee—its members have taken the opportunity in the past to express their anxiety to see consolidation of that order. That will also be done on a Scottish basis. When that order comes forward, any uncertainty or doubt about the provision will be removed.

I have pointed out that the most serious inconsistencies will be removed very soon in the amendments to regulation 3.

**The Convener:** We have two other officials with us. Does either wish to comment at this stage?

**Charlie Greenslade (Scottish Executive Rural Affairs Department):** Mr Cassidy has covered the main points. I am here in case any policy issues arise. My colleague, Dr Carnegie, from the Scottish Agricultural Science Agency, is here in case any technical questions about seed potatoes arise. We are happy to answer questions of that nature.

**The Convener:** Are there any questions for the officials?

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP):** Leaving aside the divergence of opinion on regulation 20, you have said that you accept some of what the Subordinate Legislation Committee said about the errors or problems in the regulations. Why do you think those problems have arisen? Do you feel that the staff of the rural affairs department are pressurised to try to get regulations through in a certain time? Are you trying to do too much with too few resources? Is there some other problem?

**David Cassidy:** The department's object is to produce perfection in the regulations. Despite the flaws, we are still proud of what has been achieved. We regret the flaws, but I can say no more than that.

**Alasdair Morgan:** Is the business of subordinate legislation becoming too complicated? Could the process be made simpler?

**David Cassidy:** That is a question on policy rather than regulations.

**The Convener:** It is perhaps a question for the minister.

**David Cassidy:** I am before the committee today as a mere technician.

14:15

**Ross Finnie:** Although the exercise has been complex, the consolidation of a range of regulations will simplify matters for the user who wants to source a regulation and know how it is to be implemented. More work has been created to produce simplification.

**David Cassidy:** There will be gains in the future.

**Alasdair Morgan:** You said that you hoped to introduce another regulation to cover some changes that were anticipated in European Union regulations. Some of us anticipate that European Union action might not happen as quickly as it could. Do you have any idea of the likely time scale for the revisions?

**Charlie Greenslade:** I cannot predict exactly when revisions will be made. When the provisions were drafted and similar provisions were introduced in England and Wales, it was expected that they would have a very short shelf-life. The European Commission has said that it wishes the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry to discuss the movement of small packages of seed and seed potatoes. That is planned for the autumn. We expect to introduce an amendment regulation to those regulations before the end of the year, or perhaps early next year. Of course, there could be a slip between the Commission planning to do that and carrying it out. If a long delay seemed likely, we would revisit the regulations and take on board the committee's concerns.

**Dr Elaine Murray (Dumfries) (Lab):** The statement in the Subordinate Legislation Committee's report that caused this committee concern was the suggestion that defective drafting could

"constitute a breach of Community obligation to incorporate correctly the provisions of the relevant Directives into domestic law."

Will you comment on that interpretation of the effect of the problems with the drafting?

**David Cassidy:** I do not accept that the regulations are in breach of European Community

law—perhaps Dr Murray will think, "He would say that." The Subordinate Legislation Committee is making a point that it has often made about drafting. Part 1 of the regulations is the door through which one comes to the regulations. That door has been given to us by the European Community and we have included it in regulation 3. That door is marked marketing—what is meant by marketing? The Subordinate Legislation Committee has concerns about identifying who is liable and responsible for actions under the regulations. That answer to that lies in marketing. The question is whether someone is marketing, selling, or disposing of seed potatoes within the meaning of European Community law, which is replicated in the domestic provisions.

**Dr Murray:** So you would reject that concern.

**The Convener:** What implications would there be for the seed potato industry if the committees decided to annul the regulations?

**Charlie Greenslade:** The regulations are important for Scotland because they regulate our seed potato industry, which is an important part of our agricultural sector. Without regulation of marketing, seed potato growers would not be able to market their produce.

The regulations require seed potatoes that have been in the ground during the summer and which are about to be lifted to undergo a growing-crop inspection. They also require the growing crop to meet the standards and requirements that are laid down in the regulations and which underpin our seed potato classification scheme. Without that, seed potatoes would not receive a certificate of classification and the growers would not be able to apply for the harvested tubers to be inspected and labelled—to receive a plant passport. Growers are unable to sell their seed potatoes legally on the market if they are not labelled officially by the Scottish Executive rural affairs department. The power to do that would be removed should the regulations fall.

The industry, which is valued at about £80 million per annum, would be unable to market any of its produce. That would leave the Scottish potato industry open to importation of substandard seed potatoes and we would have no powers to regulate the market in Scotland. The European Community directive would always underpin our regulations, but that directive would be toothless if the domestic regulations were not implemented. There would be two consequences of not passing the regulations: our growers would not be able to market their produce and Scotland would be open to substandard seed potatoes coming in.

**The Convener:** Would not the previous regulations cover for the absence of those regulations?

**Charlie Greenslade:** I am advised by my lawyer that they would not. If the regulations fell, the previous regulations would not necessarily be reinstated.

**The Convener:** There are no further questions for the officials. I thank David Cassidy, Charlie Greenslade and Stuart Carnegie for coming along and I invite them to withdraw from the witnesses' chairs while the committee progresses to the next part of its agenda, which is to move the motion to annul. The motion to annul is fairly simple, but I will say a few words before moving it. It was lodged in my name on behalf of the committee.

I welcome the Minister for Rural Affairs, Ross Finnie, who has come to address the motion. It is an important part of the duty of the Rural Affairs Committee to scrutinise statutory instruments. It is a responsibility that we have taken very seriously since the committee's inception. It must be noted that we try, at times, to spend as little time as is reasonably acceptable in dealing with statutory instruments. Occasionally, however, an instrument comes along that has a report attached and we are required to take longer to study it a little more closely. One such instrument was the Seed Potatoes (Scotland) Regulations 2000 (SSI 2000/201), which came with an extensive report from the Subordinate Legislation Committee.

In consulting officials from the rural affairs department during the previous few minutes, the committee addressed quite a few of the points that were included in the Subordinate Legislation Committee's report and we have raised our concerns. Having taken advice from a number of sources, however, two elements of the regulations still give concern to members of the committee.

The first is the suggestion that regulation 20 is *ultra vires*—something that not all of us would necessarily have understood from our knowledge of Latin, but which we have taken the opportunity to have explained to us. During that explanation, concern was expressed that it might well be the case that regulation 20 is *ultra vires*.

The second concern was substantially taken up by Dr Elaine Murray—that elements in the regulations may cause concern with regard to the implementation of European regulations. For that reason, and in order to air those points with the minister, it is my duty to move motion S1M-1159 on behalf of the committee.

I move,

That the Rural Affairs Committee recommends that nothing further be done under the Seed Potatoes (Scotland) Regulations 2000 (SSI 2000/201).

**Ross Finnie:** Thank you, convener. I hope that Mr Cassidy, Mr Greenslade and I have clarified that we take seriously the role that the Rural Affairs Committee and the Subordinate Legislation

Committee play in scrutinising subordinate legislation. We are disappointed about the errors and inconsistencies that appeared in the regulations.

I refer to the two substantive points that still cause members concern. We have given the matters careful thought, and I regret that our robust view is that in regulation 20, there is an overlap between the regulations and the Plant Health Order 1993. The regulations not only deal with the protection of the seed potato, but regulate its health. Nevertheless, that overlap does not lead to an *ultra vires* situation. The changes that the Subordinate Legislation Committee is calling for are entirely logical and consistent with our aims in legislating.

In making new regulations, we obviously make changes. They might be substantive changes, but they are, nevertheless, logical. In consolidating the order to make the regulations exclusively Scottish, we are changing the regulations to meet those points.

The second question—which Dr Murray raised—was whether the regulations are compliant with EU regulations. I hope that Mr Cassidy has made it clear that regulation 3 is a gateway that has been lifted directly from the European regulation. As far as we are concerned, therefore, the regulation is exactly as it was envisaged by the regulators.

I do not want to dismiss the points that have been raised, but if one considers the issue, the regulation cannot be *ultra vires*, or we would not be here. We have given the matter careful thought. If we believed that an essential part of the regulation would be *ultra vires* because of the element of overlap and protection between seed purity and plant health, we would accept the point that was made. However, that is not the case. If there were even a remote possibility that we would not comply with EU regulations, we would have had to say so.

Those explanations have been necessary to answer the points that were made. No matters of such substance remain that mean that the committee has to invoke an annulment that would have the effect—as Mr Greenslade said—of leaving the sector unregulated. That would cause difficulties in relation to the crops that are currently in the ground and would give rise to problems with imports. I hope that the committee, having considered carefully Mr Cassidy's and Mr Greenslade's points, will accept the explanations that have been given. I invite the committee to agree to withdraw its motion to annul.

**Alasdair Morgan:** I am reassured on some points, particularly by what has been said about the short shelf-life of some of these regulations, and the fact that other problems will be addressed



this year or next in a forthcoming order.

There is a clear divergence of opinion on regulation 20; the Executive holds the view that the regulation is within scope and the committee that it is *ultra vires*. That difference in legal advice is a minefield that I do not want to enter. One would think that the regulations could be open to court challenge, which would be the final way to resolve that difference. One would not like to see the Executive embarrassed in the courts. Usually, to save the Executive embarrassment—something that I am always keen to do—I would seek to annul the regulations. However, we are pulled up short by the advice that we have received, from SERAD's lawyers and from the Subordinate Legislation Committee, that if we annul the regulations, the previous regulations that are revoked by this one will remain revoked. That seems curious, but is apparently the legal consequence of the legislation. Therefore, we would end up with no seed potato regulations whatsoever. That is not a desirable situation.

14:30

More generally, I am concerned that we spend so much time considering statutory instruments. Very few of them are absolutely new, and most simply annul the previous set of instruments. We will find ourselves over a barrel every time we come up with criticisms of a statutory instrument. There is a general flaw in the procedure, which, I gather from our previous conversations, seems to have existed for about 50 years. However, that is no reason why it should not be addressed in the fulness of time. We should never be in the position where we cannot take a decision simply because something else has been cancelled—that would be invidious.

**Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD):** I agree with Alasdair Morgan's comments on the flaw in the system. There is a clear difference of opinion. The Subordinate Legislation Committee's view is in black and white:

"In the Committee's view there can be no doubt that regulation 20 is *ultra vires*."

The minister makes the point that his legal advice is that it is not *ultra vires*. We are now caught in a difficult situation where, if we were to annul the regulations, there would be chaos in the potato industry. We should not be in that position. Some thought needs to be given to ensuring that we have a better time scale to allow the Executive to go back and reconsider regulations. However, in this case, we are left with no option.

**The Convener:** If there are no further comments, perhaps the minister would care to reply to the points that have been raised.

**Ross Finnie:** I agree with the point that Alasdair

Morgan made. It is not helpful for the committee to be put in such a position. I am not a lawyer, so I cannot offer any explanation. As members will know, I am just an accountant.

**Alasdair Morgan:** Not just an accountant.

**Ross Finnie:** The only comfort that I can offer Mike Rumbles—I know that it is not great comfort—is that we took it very seriously when the Subordinate Legislation Committee drew to our attention its opinion that the regulation was *ultra vires*. We have considered the matter carefully and the explanation that Mr Cassidy gave is a reflection of that further consideration. That does not narrow the gap, but I offer that as an explanation of where I am coming from.

**The Convener:** On behalf of the committee, I will withdraw the motion to annul the regulations. During the discussion it has become clear that, in the Executive's view, annulling the regulations would cause complications. I hope that by going through this process we have highlighted the concerns of both the Rural Affairs Committee and the Subordinate Legislation Committee about the procedures for such instruments. Perhaps such issues could be addressed when statutory instruments are prepared in future. I thank the minister and his officials for attending the committee to defend the regulations.

Does the committee agree to withdraw the motion?

**Members indicated agreement.**

**Ross Finnie:** As lawyers say on such occasions, I am obliged.

**The Convener:** The next item on the agenda is the Sea Fisheries (Shellfish) Amendment (Scotland) Bill. We indicated that consideration of that item was not likely to take place before 2.45 pm, and not everyone who is likely to be involved in the discussion is present. Therefore, I propose a brief adjournment, during which we will assemble the relevant people. We shall then progress to item 2 on the agenda.

14:35

*Meeting adjourned.*

14:43

*On resuming—*

## **Sea Fisheries (Shellfish) Amendment (Scotland) Bill: Stage 2**

**The Convener:** I will first call Jamie McGrigor to move amendment 1 and speak to amendment 2. I will then call Tavish Scott, the proposer of the bill. The Deputy Minister for Rural Affairs with responsibility for fisheries, John Home Robertson, will also be given the opportunity to speak. I will then call any other member who is present, whether or not they are a member of the committee, although I think that only committee members are now present. Any committee member may speak if they indicate that they want to do so.

I shall allow a winding-up speech on behalf of the mover of the amendment and, following the debate, I shall ask Jamie McGrigor whether he still wants to press amendment 1 to a decision. If he does not, he may seek the agreement of the committee to withdraw it. If it is not withdrawn, I shall put the question on amendment 1. If any member disagrees with the amendment, we will proceed to a division and a show of hands. If amendment 1 is not pressed, or is disagreed to, I shall put the question on amendment 2. After we have dealt with the amendments, the committee must decide whether to agree to each section and the long title of the bill.

### **Section 1—Permitted fishing implements in several fisheries**

14:45

**The Convener:** I ask Jamie McGrigor to move amendment 1 and to speak to amendment 2.

**Mr Jamie McGrigor (Highlands and Islands) (Con):** I am glad that amendment 1 has been grouped with amendment 2, because they perform basically the same function.

I stress my support for the bill. It is very good and should have been introduced a long time ago. I hope that it will clear up differences between shellfish farmers and fishermen—especially fishermen who felt that, by being kept out of areas, they had been slightly hard done by. The whole point of the bill is to clear up those differences and I support that.

The purpose of my amendments is to save the Scottish Parliament time. The type of equipment that creel fishermen use, and what it is made of,

changes as time goes on and technology progresses. I would hate this Parliament to be bothered by having to amend an act constantly, or having to spend time legislating for the use of new equipment. The purpose of the amendments is to save the Parliament's time by allowing fishermen to use equipment as long as it is used in the spirit of not damaging the scallop beds or whatever lies underneath. That would go a long way towards solving the fishermen's problem.

I have been asked to lodge the amendments by fishermen's associations, all of whom are slightly unhappy about having to follow specified rules. They think that they will be limited as to creel improvements and feel that they may be unable to use improved technical equipment.

I move amendment 1.

**Tavish Scott (Shetland) (LD):** I appreciate Jamie McGrigor's opening remarks. He was a signatory to the bill in its initial stages, and I appreciate his support.

I do not accept amendment 1, however, principally because of what Jamie McGrigor said latterly when he talked about the spirit of not damaging what is underneath. The spirit of not damaging is a difficult thing to define in legal terms, and the amendment would increase the scope for argument—albeit unintentionally, I am sure.

The logic behind the wording in amendment 1 is that other, non-damaging fisheries techniques might be invented in the future, as Jamie McGrigor has suggested, which could be used without amending the act. However, as his words illustrated, amendment 1 would provide plenty of scope for argument between fishermen and the shellfish grower with the several order over what is or is not damaging and would undermine the whole reason for the proposed bill, which is to reduce conflict, not increase it. As a result, the amendment should fall. It would not be a major problem to revise the terms of the several order if a new non-damaging fishing method were to be devised.

Furthermore, I draw the committee's attention to its fourth report and endorse paragraph 9, which says:

"It has been suggested that the Bill should not require fishing implements to be specified in the Order, as the Order should permit any instrument which does not cause damage, or is used in such a way as not to cause damage. However, we consider that such a provision would create a degree of uncertainty in the Bill, and provide room for legal argument regarding which implements could be regarded as 'non-damaging'. Having an implement specified in the Order seems preferable to us in order to protect against ambiguity."

I ask the committee to maintain its position on that particular measure and not agree to the

amendment.

I am more relaxed about amendment 2, although I have been advised by SERAD that it is effectively a duplication of measures and wording that are already in the Sea Fisheries (Shellfish) Act 1967. I am sure that the minister will be able to elaborate on that. If the committee decides that such duplication has occurred, however, Mr McGrigor might not wish to push amendment 2 to a division.

**The Deputy Minister for Rural Affairs (Mr John Home Robertson):** I, too, congratulate Tavish Scott on introducing this constructive piece of legislation which, if passed—although I must not be too presumptuous—would be the first members' bill to get through the Parliament and would certainly be very useful for people farming shellfish on various parts of our coasts, not least the Shetland Islands. Perhaps that is where the interest arose, and, if so, why not?

As we cannot have both the amendments that Jamie McGrigor has very properly lodged, we will need to address them separately. Amendment 1 would remove the requirement to specify in the several order the nature of the gear that is either permitted or banned. Mr McGrigor expressed admirable concern at the possibility that the Executive might need to come back to Parliament year after year with new regulations defining what is permitted. I am advised that it should not be beyond the wit of our officials and lawyers to describe fishing with a creel, which to all intents and purposes is what we are discussing, and in such a way that it stands the test of time.

However, if the committee accepts the amendment and removes the requirement to specify in the order what kind of equipment is permitted, we will be left with the wording:

"any implement . . . which is used in a manner intended not to . . . damage".

Committee members will recognise that such wording opens up all sorts of possibilities for creative lawyers if cases come to court in future. As the phrase "any implement" might include a trawl, someone might be able to go to court and argue persuasively that they did not intend any damage. As a result, amendment 1 could do quite a lot of damage to the bill and my strong advice, on behalf of the Executive, would be to reject it, even though I understand the spirit in which it was lodged.

As for amendment 2, we—along with Tavish Scott—feel that it is not really necessary. Although I understand what Jamie McGrigor is after, section 7 of the 1967 act refers to "any person" who "knowingly" carries out various actions, which means that there has to be intent before someone can be convicted. I would therefore argue that the

point behind the amendment is covered in the principal act.

It is up to the committee whether it wants to take a belt-and-braces approach, by having the reference to intention as provided for in amendment 2, but my advice is that it is not necessary. The concern that Jamie McGrigor has raised is covered in the main legislation. That is the best advice that I can give to the committee at this stage.

**The Convener:** Thank you. Do any other committee members want to speak to the amendment?

**Richard Lochhead (North-East Scotland) (SNP):** Although it pains me, I agree with the minister and Tavish Scott on this subject. Given that the purpose of Tavish Scott's bill is to remove any potential for conflict, it would be a pity to leave that potential in the bill. We considered that matter when we reported at stage 1. Paragraph 9 on page 2 of the report states:

"we consider that such a provision"

alluding to the suggestion taken up by Jamie McGrigor

"would create a degree of uncertainty in the Bill, and provide room for legal argument regarding which implements could be regarded as 'non-damaging'."

Out of the 15 or so submissions that we had, only one referred to Jamie McGrigor's concern. I do not think that it is a huge issue among fishermen's organisations. I suggest that the committee sticks to its guns and vote against the amendments.

**Rhoda Grant (Highlands and Islands) (Lab):** It pains me too to say that I must agree with every word that Richard Lochhead said.

**Alasdair Morgan:** So much pain in one day.

**Rhoda Grant:** Anything that could make amendment 1 ambiguous would cause problems and could end up in court action and the like. I do not think that that is the intention of the amendment. We should stick with the original wording because it is specific, clear and would not give rise to any conflict.

**Mr Rumbles:** I agree with Richard Lochhead and Rhoda Grant. I understand the spirit in which Jamie McGrigor submitted the amendments. I hope that Jamie will not press the amendments rather than take them to the vote because I do not think that there is support on the committee for them.

**Tavish Scott:** There has been enough pain already, convener.

**Mr McGrigor:** I spoke earlier about the spirit in which the amendments were lodged. I am slightly surprised that members of the committee think

that an “implement” would be used to damage shellfish. After all, this order is not to protect shellfish growers. It is to allow fishermen to fish in areas where they have not been allowed to fish, except for mid-water fishing. Therefore one would think that they would be allowed to use equipment, which changes from time to time. I do not see what the minister’s argument is about.

As far as I understand it, the amended section would read “in the case of several fishery, an implement of the type specified in the order and which is used in a manner intended not to damage, disturb or injure in any manner shellfish of the description in question.” I would have thought that that was sensible.

Suppose that an implement such as a creel is changed and is less damaging, but does not fit the description in the specified order. Someone would have to come back to Parliament and go through this palaver all over again in order to be allowed to use a specific piece of equipment. That is what I am trying to avoid.

**Mr Home Robertson:** There was something rather misleading in the text that Jamie McGrigor read out. He read out what he understood to be the effect of the amendment, leaving in a reference to the order. The trouble is that his amendment would leave out the provision for an order specifying the nature of the equipment.

**Mr McGrigor:** When I spoke to the clerk to the Rural Affairs Committee, we agreed that a reference to the order would be included.

15:00

**Mr Home Robertson:** I am sorry, but it is not.

**Mr Rumbles:** On a point of order. I thought that Mr Home Robertson and Jamie McGrigor were summing up, rather than entering into another debate.

**Mr Home Robertson:** I apologise. I was trying to clarify matters.

**The Convener:** Do you have any further comments, Jamie?

**Mr McGrigor:** No, none. I have been sent the text of the bill as it would read if my amendments were agreed to. Under my first amendment, section 1 would read: “in the case of several fishery, an implement of a type specified in the order and which is used in a manner intended not to damage”. The words “of a type specified in the order” would, therefore, remain in the bill.

**The Convener:** That is the second amendment.

**Mr McGrigor:** No, it is the first amendment. If it is not, what I have been sent is entirely wrong.

**The Convener:** It has been pointed out to me

that, although that may have been first amendment that you lodged, the two amendments have been printed in reverse order, as that is the logical order for them to follow.

**Mr McGrigor:** In that case, I must apologise. I had no idea that the order of the amendments had been reversed. In the circumstances, perhaps I should seek to withdraw the amendment.

**Mr Rumbles:** That would be a good idea.

**The Convener:** Are you indicating that you wish to withdraw amendment 1, Jamie?

**Mr McGrigor:** Yes.

*Amendment 1, by agreement, withdrawn.*

*Amendment 2 not moved.*

*Sections 1 and 2 agreed to.*

*Long title agreed to.*

**The Convener:** Stage 2 of the bill is now complete. As the Deputy Minister for Rural Affairs said, this is the first member’s bill to complete stage 2 in the Scottish Parliament. We congratulate Tavish Scott on his achievement. Well done.

**Members:** Hear, hear.

## Amnesic Shellfish Poisoning

**The Convener:** Item 3 on our agenda is amnesic shellfish poisoning. As members will recall, this item was on the agenda for last week's meeting. We conspired to delay discussion of it until Rhoda Grant and John Farquhar Munro had met the Deputy Minister for Rural Affairs. Rhoda has produced a paper, which should have been circulated to members. We will take this opportunity to invite her to say a few words on it and on her experience of the meeting last week.

**Rhoda Grant:** I want to clarify that Maureen Macmillan and I asked for a meeting with ministers because of constituents' concerns—the basis of the meeting was that it was between ministers, our constituents and ourselves. Needless to say, word got round the industry like wildfire and, even before we invited our constituents, we received representations from a number of people who wished to attend. Where we could, we tried to accommodate those representatives, as we felt that that was important. Unfortunately, we were unable to accommodate everyone, as numbers were limited in the small room that we had booked.

It is important that I report back to the Rural Affairs Committee because of the interest that it has expressed in amnesic shellfish poisoning. That is why I submitted my report as requested.

**The Convener:** I understand that John Munro was present at the meeting as well. Is that the case?

**Mr John Munro (Ross, Skye and Inverness West) (LD):** Yes.

**The Convener:** Do you have any comments about the meeting?

**Mr Munro:** I was advised that the meeting seemed to be closed. As an intruder, I was not aware of that.

We had a useful debate, at the end of which I made the point that we had gone through a similar process a year before, when we had much the same representations, with little happening during the intervening period. I expressed concern about that and, given that so little had happened, asked whether we would be meeting in a year's time in order to go through the same exercise again.

However, as a result of that meeting, there has been a lot of interest in what is happening in the shellfish industry, particularly in relation to scallops and the closures around the coast. Yesterday, some of my colleagues and I had a useful meeting with the Food Standards Agency and some of the team from the Marine Laboratory in Torry in Aberdeen. I appreciate the difficult, complex work

that is going on in the testing regime, which appears to be the cause of concern to the scallop industry.

The Food Standards Agency, or the Marine Laboratory at least, should be more prominent and transparent in its dialogue with the industry, so that the industry is made aware of the method of testing, where the testing is taking place and the regulations and restrictions that govern the testing regime. During the autumn and winter and before the fishery opens in spring next year, I hope that the regulations will become more acceptable to the industry—unlike what is happening at present.

**The Convener:** Do members have questions for Rhoda Grant or John Munro, or comments on the issues raised at last week's meeting?

**Richard Lochhead:** I want to make a brief comment, although I could talk for a wee while about the background to the meeting that, apparently, Rhoda Grant and Maureen Macmillan organised. I have communicated with the minister since that meeting, which Fergus Ewing was not allowed into, and I am grateful to him for apologising for the confusion that arose. Many questions arise over the meeting itself.

However, Rhoda Grant's report is useful and we should take it on board for when we have the Deputy Minister for Rural Affairs and the Minister for Health and Community Care before us, a meeting to which we agreed last week. I understand that that meeting may not take place until November, but that is too far away. We should pull out all the stops and have a meeting as soon as possible.

**Alasdair Morgan:** Rhoda Grant's report says that

"the Food Standards Agency was unsure whether Ireland was acting within the terms of the directive."

Over the piece, it has been my impression that there has been confusion about the precise situation in Ireland. Fishermen certainly seem to believe that the Irish have found an acceptable way in which to proceed and there is a suggestion that they may be acting outwith the European regulations. I would like to ask Rhoda whether she was able to determine whether there had been any contact between the Food Standards Agency or any such bodies and their equivalents in the Republic of Ireland to see whether there was anything that we could learn from the Irish.

**Rhoda Grant:** It was certainly mentioned that the FSA had been in contact with people in Ireland and that it had concerns about the regime there. However, it had not officially flagged up those concerns to the European Union; it wanted to pursue that line of action at some point, but not yet. It would be counterproductive for the FSA to

tell the EU that the Irish are in the wrong and should be ruled out of order while asking for a similar derogation for Scotland.

**The Convener:** On the instructions of the committee, I wrote to the relevant department in Ireland requesting further details. No reply has been forthcoming.

**Alex Fergusson (South of Scotland) (Con):** I have a quick question on the last paragraph of the paper. There was a suggestion in the meeting that white meat could be sold because of the low incidence of infection. The paper says that

“the industry could not agree to look at this as a way forward.”

Who made the suggestion and what reasons were given for not considering that as a way of enabling the industry to make some sales?

**Mr Munro:** The Food Standards Agency is of the opinion that it is complying with the regulations as it understands them. I asked why our Irish counterparts were able to put white meat on the market. The Food Standards Agency has questions about the legality of such sales. It is hoping to have a meeting with colleagues in Europe by the end of the month in order to clarify what is happening in relation to the Irish fishery. My point was that, if such activity is allowed in Ireland under the EU directive, it should also be allowed in Scotland. There are complications.

**Alex Fergusson:** Was it the Food Standards Agency that did not want to go down that road?

**Rhoda Grant:** The suggestion about selling the white meat was made by the scallop farming industry, which is unable to diversify—for the scallop farmers to be able to sell anything would alleviate their situation. The mobile fishermen in the scallop industry were not keen on that approach because they believe that the value of the white meat is less than that of the scallop. They thought that that approach would lead to over-fishing and low values and so did not see it as a solution. However, I have written to the minister to request that research be carried out into scallop farms selling white meat only. In that context it would be easy to license the industry and to monitor the areas. I am awaiting a response to that question.

**Mr Rumbles:** It is my understanding that one of the major differences between the Irish industry and its testing methods and our industry and our testing methods is that in Ireland the scallops are washed before being tested. As far as I know, that does not happen in Scotland. That could account for the different approaches in Ireland and Scotland. Convener, I hope that you will press the Irish for a response. I want to check whether the difference is simply to do with washing scallops

prior to testing. That is an important issue.

**Rhoda Grant:** The question of dealing with processed scallops was mentioned at the meeting. The FSA told us that it was going to do some testing on processed scallops—washed and prepared scallops—to discover whether there was a difference in the testing results. Those experiments are on-going.

**Mr Rumbles:** The FSA may be surprised.

**Alasdair Morgan:** Did its representatives say what would happen if it found, on testing, that the processed scallops were within the limits?

**Rhoda Grant:** They did not. They have a proposal at the European Parliament to consider different ways of testing. I would assume that this information and the evidence, if they get it, will help them to get that proposal through.

15:15

**Richard Lochhead:** The FSA assured me at a briefing two weeks ago in Aberdeen that washing the scallops had no impact whatever on the tests.

**Mr Rumbles:** That is not the view of the Scottish Fishermen's Federation.

**Richard Lochhead:** Was there any indication of a policy change on the part of the Executive at that meeting? From the report, there does not appear to have been, but I want that to be confirmed.

**Rhoda Grant:** I think that the Executive's policy remains the same: it is striving to find a solution to the problem, as it reiterated strongly at the meeting. The reason for the existence of the Food Standards Agency is to remove such decisions from politicians, who come under pressure. The Executive was urging the Food Standards Agency to explore all angles.

**Mr Rumbles:** I was speaking to Hamish Morrison of the Fishermen's Federation this morning. His point was, “The Food Standards Agency would say that, wouldn't it?” I am asking only that we consider the issue. I would like to ensure that we can put the matter to one side if it is not an issue, but it could be important.

**The Convener:** Are there any further comments?

**Mr Home Robertson:** For starters, it might be appropriate for me to say something about the circumstances surrounding the meeting that took place last week, about which there has been some misunderstanding.

Rhoda Grant contacted my office early in the previous week, asking for a meeting between the industry and Executive ministers and officials. I happened to be out of the country for some days that week and my private secretary, Stuart

McLean, who is sitting behind me, found himself under siege from practically everybody up and down the west coast and on most of the islands, all wanting to attend the same meeting. At one point, I thought that we would have to book the Usher Hall for the meeting. I stress that the purpose was for ministers—Susan Deacon and me—and for representatives of the Food Standards Agency to hear from the industry. It was not intended to be a political meeting, although some colleagues at this meeting today were present at it.

I have already apologised personally to Richard Lochhead for the misunderstanding about his attendance. That said, the meeting was frank and full. About 95 per cent of it was on the food side, rather than the fisheries side, and it would not be proper for me to comment on that aspect of the Executive's responsibilities. Members will have an opportunity to return to that side of things in due course when dealing with colleagues from the health department.

Those of us in the rural affairs department with responsibility for fisheries want to do what we can to support the scallop fishing industry. We have invited representatives of the industry to come forward with proposals for activities that we might be able to support through funding from the financial instrument for fisheries guidance, for example. We want to do anything that we can to help, as we recognise that the situation is serious.

Colleagues on the committee may wish to know one snippet of good news: just before coming into the meeting, I learned that box J14 has just been reopened for scallop fishing. I am not sure, but I think that it must be somewhere near Jura—it is somewhere west of the Mull of Kintyre. The order for that was signed earlier today. I cannot speculate, but that may be an encouraging indication.

**Richard Lochhead:** I can make a clarification on box J14. I think that the decision on that arose after a visit I made to Mallaig about two weeks ago. A fisherman, who was at sea at the time, made a call into the office when I happened to be there, saying that J14 was being fished by Irish boats but was closed to Scottish boats. I called the FSA straight away, telling it about that call. The FSA immediately agreed to charter a boat to test J14, given that one fleet was fishing there and one was not. The confusion arose because the boundary between the Scottish and Irish zones goes through J14. The clearance resulted from confusion because the Irish were able to fish areas—

**Mr Home Robertson:** With respect, I think that that is very unlikely. The Food Standards Agency gives advice to ministers on the basis of scientific advice rather than because of political pressure. I

just thought that it would be worth conveying that little bit of good news to the committee.

**The Convener:** If there are no further comments, we should go on to address one or two other matters. A meeting with the Deputy Minister for Rural Affairs and the Minister for Health and Community Care has been tentatively arranged for Tuesday 7 November at 2 pm. Richard Lochhead has expressed the concern that that may not be soon enough. Does anyone else have views on that date?

**Mr Rumbles:** We are also asking the Minister for Health and Community Care about rural dental care.

**The Convener:** I will discuss with the clerks whether it will be possible to arrange that meeting for an earlier date. Given the additional information that we have received from John Munro, Rhoda Grant and the minister, are there any alternative views on how the meeting should be organised? Do members still wish to meet the Deputy Minister for Rural Affairs and the Minister for Health and Community Care to discuss the issues surrounding amnesic shellfish poisoning?

**Des McNulty (Clydebank and Milngavie) (Lab):** We also need someone from the Food Standards Agency.

**The Convener:** That arrangement is in hand. Members can take it as read that we will take further steps to find out from the Irish Government what is happening and to raise the specific points that Mike Rumbles mentioned. I thank the minister for his help on this and the previous item.

## Subordinate Legislation

**The Convener:** The first piece of subordinate legislation before us is the Suckler Cow Premium Amendment (Scotland) Regulations 2000 (SSI 2000/215), which has been circulated to members along with the explanatory note.

These regulations form part of Scots law only. They amend the regulations that govern the administration of the suckler cow premium. The amendment is to allow applications to be submitted electronically. The Subordinate Legislation Committee noted in its report that the principal regulations had been subject to six amendments and welcomed the Executive's intention to consolidate the regulations. If there is any concern about the instrument, the Rural Affairs Committee will have to submit a report by 25 September, although the final date for action by the Parliament is 30 September. Are members content with the instrument?

**Alasdair Morgan:** I think it slightly ironic that, in order to put in electronic returns, one has to get authorisation in writing.

**The Convener:** I will conclude that the committee wishes to make no further comment.

The second instrument is the Animals and Animal Products (Import and Export) (Scotland) Regulations 2000 (SSI 2000/216). The regulations revoke and re-enact with changes the Animals and Animal Products (Import and Export) Regulations 1998. They include new provisions that set out detailed animal health conditions arising from new European measures for intra-community trade in cattle and pigs. The Subordinate Legislation Committee noted in its report two instances of defective drafting and expressed doubts as to whether the internal appeals procedure against decisions made by the Executive were compatible with article 6.1 of the European convention on human rights. Should there be any concern with this instrument, the Rural Affairs Committee would have to submit a report by 25 September and the Parliament would have to complete its process by 30 September. Bearing in mind the views expressed by the Subordinate Legislation Committee, do members have any comments on these regulations?

**Dr Murray:** Is it possible to point us towards the section that deals with appeals? That objection seems significant.

**The Convener:** The report—the Subordinate Legislation Committee's 31<sup>st</sup> report—was published only recently, which is why it has not been circulated. Paragraph 16 in the section on these regulations states:

"Regulation 28 also raised the question of whether the Regulations should have included a specific right of appeal, as a matter of course, in order to comply with Article 6 of ECHR. Article 6(1) states that in the determination of his civil rights everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law."

**Mr Rumbles:** I do not have a copy of that.

**The Convener:** It is a recent publication; it became available only yesterday. Do members feel that they wish to consider the report in relation to—

**Mr Rumbles:** I have not seen it.

**Cathy Peattie (Falkirk East) (Lab):** Neither have I.

**Rhoda Grant:** I have not seen it either, but paragraph 28 of the SSI says that whoever's application is turned down will receive "in writing" the reasons for the decision and

"the details of his right of appeal against the decision".

Would the details of the right of appeal clarify whether ECHR had been complied with? There is no information on what the appeals procedure actually is, unless it is described somewhere else.

**Mr Rumbles:** Some members of the committee have this information and some have not, so how can we continue this discussion?

**Rhoda Grant:** We do not have the Subordinate Legislation Committee report, but we have the SSI.

**Mr Rumbles:** So how can we discuss the report?

**Rhoda Grant:** Because the convener has just read it out to us.

**Mr Rumbles:** Well, I am not happy that we are discussing this in this way. It is important to have the detail in front of us.

**The Convener:** We can continue with this next week, and we will have the details circulated.

**Dr Murray:** If we are going to continue with it, can we request a bit more detail on the right of appeal? As Rhoda Grant said, there is no information about the appeal mechanism, other than that the person would be notified of the right to appeal. We need more information about the mechanism.

The Executive's response suggests that the result to be achieved is fixed, although the Executive has some latitude as to how that result is achieved. The question is whether that is within the competence of the Scottish Executive and whether the right of appeal is dictated by the original legislation.

**The Convener:** That information will be sought



and supplied to members in advance of our next meeting. At that meeting, this topic will be on the agenda again.

Thank you, ladies and gentlemen, for your attention. As there are no other issues relating to items on today's agenda, that brings us to the end of the meeting.

*Meeting closed at 15:30.*



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