

RURAL DEVELOPMENT COMMITTEE

Tuesday 30 January 2001
(*Afternoon*)

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RURAL DEVELOPMENT COMMITTEE

2nd Meeting 2001, Session 1

CONVENER

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

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

Mrs Margaret Ewing (Moray) (SNP)

*Alex Fergusson (South of Scotland) (Con)

*Rhoda Grant (Highlands and Islands) (Lab)

*Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab)

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

*Mrs Mary Mulligan (Linlithgow) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Jamie McGrigor (Highlands and Islands) (Con)

WITNESSES

Rhona Brankin (Deputy Minister for Rural Development)

Paul Cackette (Scottish Executive Rural Affairs Department)

Derek Feeley (Scottish Executive Rural Affairs Department)

Colin Forsyth (Food Standards Agency Scotland)

Jim Stephen (Scottish Executive Rural Affairs Department)

CLERK TO THE COMMITTEE

Richard Davies

SENIOR ASSISTANT CLERK

Tracey Hawe

ASSISTANT CLERK

Jake Thomas

LOCATION

The Chamber

Scottish Parliament

Rural Development Committee

Tuesday 30 January 2001

(Afternoon)

[THE CONVENER *opened the meeting at 13:37*]

The Convener (Alex Johnstone): Ladies and gentlemen, I apologise for the slight delay in starting. We had a wee problem with the sound system, but we are ready to go now.

Mrs Mary Mulligan (Linlithgow) (Lab): On a point of order. Given the importance of having the minister to give evidence, I wondered why the time at which the meeting started had to be brought forward. Some of my colleagues had already arranged to go to other meetings. As members can see, Cathy Jamieson has still not arrived. Such changes cause difficulties when made at short notice.

The Convener: I apologise for the change to the time. My understanding is that it was brought forward to suit the minister's diary and to allow the minister to go to another meeting after giving evidence.

Mrs Mulligan: In future, would you consult the spokespeople of the parties before agreeing to such a change, which can cause difficulties?

The Convener: I take on board the fact that the change has caused some difficulties. Richard Davies and I will investigate the arrangements for adjusting the timings of meetings. We will let you know about that. If you have any further suggestions, we will be delighted to have them.

The first item is to consider whether items 4 and 5 should be taken in private. Item 4 relates to the report into the circumstances of the closure of the Islay Creamery. We have a final draft of the report and we require to consider and approve it. Draft reports are normally received in private, and I propose that we do that today.

Item 5 on the agenda is to consider a claim for witness expenses arising from the meeting in Dumfries in December. We have dealt with such claims in private before and I suggest that we do so again.

Those items have been grouped at the end of the agenda for the convenience of the sound staff and members. Does the committee agree to discuss those items in private?

Members *indicated agreement.*

European Fisheries Negotiations

The Convener: Item 2 on the agenda is a report from the Deputy Minister for Rural Development, Rhona Brankin, who is popularly known as the fisheries minister. Rhona Brankin is accompanied by officials Derek Feeley, Ben Rolles, Andrew Brown and Stuart McLean. I propose to invite the minister to make a statement to the committee. I will then throw the session open to questions. The minister will now tell us what is going on in fisheries business.

The Deputy Minister for Rural Development (Rhona Brankin): Thank you, convener. I do not know about the description "popularly known".

I am delighted to have the opportunity to speak to the committee on the outcome of recent negotiations in Europe. The Parliament has spent considerable time on the issues, so I intend to make only brief remarks. I am happy to answer questions. Derek Feeley, Andrew Brown and Ben Rolles—a strong team—are with me to answer any more detailed questions that might arise.

To have the full picture of the outcome of negotiations about total allowable catches—TACs—for 2001, we need to go back to the negotiations that were held at the end of November between the European Union and Norway. For those negotiations, the Executive first promoted the argument that targeted cod recovery measures were possible and that we should focus on areas of high cod concentration. The successful deployment of those arguments took us from a proposed 50 per cent cut in the haddock TAC to an agreement for only a 16 per cent cut. We also secured a transfer of more than 6,000 tonnes of haddock from Norway.

The EU-Norway outcome was important in two ways. First, it broke the link in the Commission's mind between cuts in the cod TAC and a cut in haddock. Secondly, it provided an alternative to cod, by setting a haddock quota for 2001 that was above the level for 2000.

Negotiations moved on to the December council. On 19 December, I made a statement in Parliament about the outcome of that council meeting. There is no doubt that this year's discussions about TACs were among the most difficult that have been made. We cannot ignore the fact that many fish stocks are in a poor state. There is no magic solution whereby we can work towards recovery without reducing fishing effort.

Reductions in TACs were inevitable, and are essential for the long-term sustainability of the fisheries and the communities that depend on them. We had to put long-term conservation requirements ahead of short-term fixes.

Nevertheless, we made some important negotiating gains without having to prejudice that general approach. For example, our invocation of the Hague preference on North sea haddock meant that the UK quota was more than 16,000 tonnes—65 per cent—higher than it was in the Commission's original proposal. Those extra fish are worth £16 million to the Scottish industry.

We also argued up the nephrops TACs from the initial proposal for a 20 per cent cut to the final outcome of a 10 per cent cut. On the subject of nephrops, I can tell the committee that we have persuaded the Commission to consider historical data as a basis for reopening the TAC, and we are now pulling together a detailed set of arguments.

We had to deal with the difficult situation of North sea whiting and the industrial bycatch. I made detailed points about that issue on 19 December and I do not want to go over that ground again. However, we did not get the split between fishing for human consumption and the industrial bycatch element that we would have liked. The industrial bycatch element remains unallocated and we will keep that position under review.

We reached agreement with Denmark to hold discussions on the possibility of reducing the TAC and adjusting the bycatch in the North sea sand eel fishery. Those discussions will get under way on 26 February, when there will be a meeting of officials in Edinburgh.

13:45

I will speak briefly about the recent discussions on a cod recovery plan, about which I am pleased that we have at last reached agreement. We wanted a programme that would deliver credible cod recovery measures without prejudicing unduly the possibility of alternative fishing opportunities for the Scottish fleet. That is what we have achieved.

The agreed proposals for emergency measures are based on seasonal closures of certain areas during the spawning season and on an agreement to develop technical conservation measures for fishing gear in the longer term.

The Scottish Executive and the Scottish fishing industry worked tirelessly to formulate a plan that would be in the best interests of our fishermen. Now that the negotiations have concluded, I can confirm that the agreed outcome owes a great deal to ideas that were developed by the Executive and the industry and which were forcefully argued by our negotiating team. The fact that the industry and we had common objectives was of considerable benefit during those discussions and I wish to pay tribute to the positive and constructive role that was played by the

industry's leaders.

I should say something about the allegations about perceived inactivity that were made against the Executive. The outcome that was achieved demonstrates that nothing could be further from the truth. I was pleased by the industry's recognition of the positive role that was played by the Executive during the negotiations. In my experience, it is never wise to show all one's cards before one gets into a negotiation. What matters is where one ends up and, from our perspective, the result has been fairly positive and is entirely in line with the position that we adopted at the outset of the negotiations—a targeted measure that focuses on areas of cod abundance.

Finally, I will address the impact on the industry of the recent negotiations. I am fully aware that tough times are ahead and I have made it clear that I intend to discuss with the industry how we should tackle that impact. I will meet the Scottish Fishermen's Federation later this afternoon to begin that process. Until we have a chance to assess carefully the effects of recent events, I will not commit myself to any particular course of action. Our minds remain open.

Thank you, convener. I will be delighted to take questions.

The Convener: Thank you very much, minister.

There is a distracting sound of power tools coming from somewhere. I hope that it does not prevent members from hearing what is being said.

We now have an opportunity to ask questions. As usual when we are dealing with fisheries, Richard Lochhead is straining at the leash. Therefore, I propose to call him first.

Richard Lochhead (North-East Scotland) (SNP): I thank the minister for her opening statement and I welcome her to the committee.

I recognise that the minister has faced difficult times in recent weeks—they have also been difficult for the industry. I am sure that the minister recognises the fact that we are now in the most crucial period for the industry for decades. The industry has suffered two blows—quota cuts in December and the temporary closures of key fishing grounds as a result of the cod recovery plan. However, we accept that there might have to be short-term pain for long-term gain. Therefore, the temporary closures that are part of the cod recovery plan are essential.

As the minister is aware, the industry is looking for a vote of confidence from the Government, not least to keep the banks at bay and to retain crews who might be tempted to go elsewhere if they feel that they have no future in the industry. We all recognise that the fishing industry must have a future, because that is tied into the future of many

of Scotland's rural communities, particularly coastal communities.

There is a clear case for the Government to implement both short-term and long-term measures. I would like the minister to give us some feedback on that short-term and long-term help. Short-term help might involve compensating skippers for tying up their boats temporarily. Otherwise, they might go to other fishing grounds that are not closed, which would simply shift the problem. I would appreciate the minister giving a response to that specific proposal.

There is a longer-term proposal to restructure the fleet to ensure its long-term viability, which will require new finance from the minister. Is the minister willing to give a commitment today that that scheme will be funded, provided that it is a proper decommissioning scheme, which decommissions the boat, the licence and the quota to ensure that it is effective?

Is the minister willing to go on record today to give financial support to the fish processing industry? The task force that is currently under way will be able to produce real proposals only if they will be funded by the Government, otherwise the task force will turn into another talking shop. Many people in the fish processing industry are expressing that fear to me.

The background is that the Government has announced £40 million to help car workers at Nissan south of the border. Our fishing industry wonders why £40 million can appear from nowhere to save 1,500 jobs at a car plant; over 20,000 jobs are dependent on the fishing sector in Scotland in many remote and fragile communities. The industry wants to know whether the minister will rule some things in and offer substantial support to the industry.

Rhona Brankin: As I said, we recognise that these are tough times for the industry, but it is important that we do not rush into this. I will have initial talks this afternoon with the Scottish Fishermen's Federation. We have said to the federation that we acknowledge that there is a request for a decommissioning scheme. Work is on-going; we have asked the SFF to draw up figures for us and we are examining the possibilities. The meeting with the SFF is an initial meeting to consider where we are now. I am committed to working with the fishermen's organisation to seek a way forward.

As Richard Lochhead well knows, I am not able at this stage to put figures on decommissioning. We must get a clear view of the impacts and in which sectors of the industry it might be beneficial to reduce capacity. We must consider the matter carefully to ensure that, if there is a case for decommissioning, any scheme will be targeted to

achieve the change that it seeks.

If we consider what happened the last time that there was decommissioning, evidence suggests that some boats were decommissioned and that money was reinvested in bigger, more powerful boats. We must be clear about what we are setting out to achieve, have the discussions, get the statistics and get the views of the industry about what it thinks is the best way forward on decommissioning.

We are aware, as are Richard Lochhead and many of his colleagues on the committee, of the possible impact on fishing communities; we take that very seriously. We must consider it in discussions about decommissioning.

A couple of questions have been asked recently about displacement. We must remember that fisheries are quota-controlled. In order to prosecute a fishery, vessels must be allocated quota in the first instance. We wanted to ensure that fishermen had alternative fishing opportunities during the closed period. We successfully negotiated the North sea cod recovery plan, which provides such opportunities—that is important. We must also recall that quotas for this year exceed last year's catches. Consequently, the displacement of fishing effort may not be as great as is feared, although we must keep an eye on that.

We are also aware about the problems of fish processors and we have set up a working group to consider that sector; we must be able to consider the industry as a whole. We must take account of the fish processing industry further down the line, when there might be change and restructuring in the industry. As members know, I should get the report from the fish processing working group very shortly.

Richard Lochhead: I thank the minister for her comments.

Before I ask my final question, I must say that it is difficult to discern a difference in the minister's position today compared to before the quota negotiations began in December. It would be welcome if the minister was able to make a commitment to making a ministerial statement as soon as possible, giving a vote of confidence in the industry through financial support—that is what the industry is crying out for.

Finally, because of the difficulties that face the Scottish industry, it is imperative that, as far as that industry is concerned, the negotiations over the common fisheries policy are spot-on. There is a great deal of concern about last week's vote in the European Parliament, where that Parliament voted against some of the founding principles of the policy, such as relative stability and the six and 12-mile limits, and for amendments to the

Shetland box. Will the minister outline the Executive's response to that vote and indicate its status, with particular regard to the forthcoming green paper? Is it the minister's understanding that the vote, which would place the Scottish industry—indeed, the Scottish Government—on the back foot, may be incorporated into the green paper on the CFP that is about to be published by the European Commission?

Rhona Brankin: Richard Lochhead's first point implied that the Executive has been rather slow off the mark. To respond to that, we have just had the result of the cod recovery plan—the industry fully accepts that, to consider things as a whole, we had to await the outcome of the plan. To have made a statement immediately following the outcome of the December fisheries council would not have been helpful—it is recognised that we needed the full picture. I do not accept any allegation that we have been slow off the mark.

On the common fisheries policy, we are awaiting the initial document from the Commission. Clearly, issues such as the Shetland box and relative stability are important to the fishing industry in Scotland. Perhaps Derek Feeley wants to say something about last week's European Parliament vote.

Derek Feeley (Scottish Executive Rural Affairs Department): The vote was disappointing, because it went against a number of our arguments on the CFP review. The European Parliament must be consulted, but it has no decision-making powers in relation to fisheries. The Commission is required to take into account its views in formulating its proposals; no doubt it will do so, but equally it will take account of the views that are expressed by member states. That is why we must establish our arguments early and put them at the forefront of the Commission's mind. We have been doing work on the economics and the conservation benefits of the Shetland box, which we will submit to the Commission before the green paper is published.

It is unlikely that the European Parliament's vote will influence the green paper, because the paper is already at an advanced stage of preparation. We expect to see it in March—it might reflect to some extent what the European Parliament has said, but it is, by and large, a drafted document that is about to become part of internal Commission procedures.

Rhoda Grant (Highlands and Islands) (Lab): On Richard Lochhead's suggestion about decommissioning, as I understand it, no decisions have been made. He talked about decommissioning quota but, rather than decommissioning quota, would not it be sensible to put quota from decommissioned boats into community trusts and so on? My problem is with

bycatch, when boats are over quota in certain species and must throw them over the side. If quotas were held at harbours or the like, and could be bought by boats landing fish for which they were over quota, that would stop some of the wasteful practices that go on. If that were priced properly, it would encourage people not to catch over quota.

Rhona Brankin: That is exactly the kind of proposal that we need to consider. There are pros and cons, but we have an open mind.

Rhoda Grant: You talked about discussions with Denmark, which are to be welcomed because there is a lot of concern in the industry about industrial fishing. During the February discussions, will you speak to the Danes about fishing in closed areas? I understand that industrial fishing will be allowed to take place in closed areas but that normal cod fishing will not.

14:00

Rhona Brankin: As part of the cod recovery plan, there is to be some fishing for sand eels in the closed areas. I see Jamie McGrigor shaking his head, but the science shows that the sand eel fishery is a clean fishery—I can ask one of the officials to explain the details if necessary. Inspections of industrial trawlers were undertaken in 1999 and 2000 and showed that the bycatch from sand eel fishing is often 0 per cent and almost always less than 1 per cent, which is important in terms of the cod recovery plan. Nevertheless, we need to be able to monitor the sand eel fishery closely. That is the advice that we have been given. There will be observers on the boats to monitor the situation and we will keep members in touch with what is happening.

We have been successful in our negotiations on the cod recovery plan, because fishing for Norway pout has been excluded from the closed areas. It was important to exclude that fishery, because there is evidence of a significant bycatch in it.

Derek Feeley: The other thing to bear in mind is that although there is a derogation for sand eels, it applies in only part of the closed area. In the area where the Scottish fleet traditionally fishes, there will be no derogation for sand eels. The sand eel derogation is allowed south of a line drawn at 59 deg north. That was agreed in response to requests made by the Danes during the negotiations. They wanted to fish for sand eels. They say that it will happen only during April and only in their own waters.

Mr Jamie McGrigor (Highlands and Islands) (Con): Do you agree that the 20mm mesh used for industrial fishing catches everything and that industrial fishing is the only industry in which there have not been significant cuts in quota? Do you

think that we should be pushing for really significant cuts in industrial fishing? It is not something that is done a great deal by our own fishing fleet, and it is taking bycatch of very young fish and a lot from the bottom of the food chain. Would you be prepared to fight for further cuts in industrial fishing?

Rhona Brankin: I have already said that we have concerns about industrial fishing from the point of view of the bycatch, which is why we argued strongly for the sea pout industrial fishery not to be allowed in the closed areas. We also share the concern of Scottish fishermen about the sand eel as a feed for other fish. We have already intimated that we are having discussions with the Danes at the end of February. We want to be able to pursue the issue with the Danes and I would like to discuss it with the Danish fisheries minister. I have given an undertaking to the Parliament to do that. As far as the cod recovery plan is concerned, I am satisfied that we have managed to exclude the Norway pout fishery from the closed areas. As Derek Feeley said, the impact on the cod bycatch of the sand eel fishery is very low.

Mr McGrigor: I agree that the Norway pout is the dirtiest of all the industrial fisheries. What pressure are you putting on other countries to introduce technical conservation measures such as square-mesh panels—which our fleet is using—to protect juveniles and future stocks?

Rhona Brankin: All UK boats fishing in Scottish waters are required to use square-mesh panels. There will be further discussions on technical conservation measures in March, which will cover the cod recovery plan. We will share what we have done and will further emphasise the importance of technical measures. We have already been able to demonstrate a gain, in that we have deployed conservation measures to allow other species to continue to be fished. We will deploy those arguments in March. It is an important part of the next phase of the cod recovery plan.

Mr McGrigor: What is happening in the west coast fisheries in relation to the recovery plan?

Rhona Brankin: Members will have seen the relevant map—I have one with me now.

Mr McGrigor: There does not seem to be anything for the west coast.

Derek Feeley: During the negotiations last week and the week before, we took a conscious decision not to discuss west coast issues. There were two reasons for that. First, it was extremely difficult to agree North sea measures even without the complication of the west of Scotland waters. Secondly, the negotiations have been with Norway—Norway has joint management status with the EU over the North sea, but not over the west of Scotland. It has therefore been agreed that

we will have separate discussions on west of Scotland cod stocks. It is hoped that we will get the first round under way in the week commencing 12 February.

Mr McGrigor: As you can imagine, there is a perception that the cod recovery programme will move a lot of effort to the west coast. That is of concern with regard to the cod spawning grounds around Harris and Lewis. There is a large area off the Firth of Clyde that comes under the Irish cod recovery plan. There should be some mention of the west coast, given fishermen's representatives' worries about the future.

Derek Feeley: It is intended to have a recovery plan for the west of Scotland.

Mr McGrigor: Soon?

Derek Feeley: As soon as possible. The starting point for the Commission will be to have measures for the west coast similar to those being applied in the North sea. That will mean concentrating on areas in which cod are in relatively high abundance and linking those with spawning areas, to protect the cod while they are spawning. Subsequently, that will be reinforced by technical measures to protect the juvenile fish.

Dr Elaine Murray (Dumfries) (Lab): I am concerned about the definition of a closed area. Surely if an area is closed for fishing, it should be closed for industrial fishing, not just because of the bycatch, but because of disturbance in spawning areas and the removal of food. I hope that you will take a strong line on that.

I am concerned that the technical conservation measures that we have taken in Scotland have not yet been taken in England and Wales. To what extent is there a joint approach? We hoped that there was one between the UK Government and the Scottish Executive. To what extent have the two fisheries ministers been in contact with each other, progressing the same issues? Can you persuade Westminster to catch up with Scotland on some of the issues?

Rhona Brankin: One of the difficulties is that if the closed areas were closed to industrial fishing, they would also have to be closed to pelagic fishermen, which would have a major impact on the pelagic sector. The issue is complex. The important thing is that we have excluded the Norway pout fishery, which was the problematic industrial fishery for the cod spawning ground.

I share your frustration about the square-mesh panels. There is always a worry about giving definite dates. However, the square-mesh panel is being discussed at Westminster and I understand that it will be agreed within the next couple of weeks. An inordinately long period seems to have elapsed; and we share your frustration.

Dr Murray: What contact do you have with Elliot Morley to progress the agenda?

Rhona Brankin: I meet Elliot Morley regularly and keep in touch with him by phone. Every time we meet, the square-mesh panel issue is raised along with many others. Officials from the Scottish Executive have played a leading role in developing the cod recovery plan, as they have done at the fisheries council.

Richard Lochhead: Has the minister written to the UK minister, expressing the Parliament's anger and concern? Our industry wants other nations to adopt a 90mm square-mesh panel, but we cannot ask them to undertake to do that if they can turn round and say, "Part of your member state has not done it, so why should we?"

The Convener: Richard is asking whether you have anything in writing from Westminster.

Rhona Brankin: I do not know what the most recent information that Derek Feeley received was, but I understand that we will receive what you ask for in the next couple of weeks. I assure you that the matter has been raised time and time again. Elliot Morley is fully aware of our concerns and the concerns of the Parliament.

Derek Feeley: The matter was raised by the minister when she spoke to Elliot Morley before the cod recovery plan got under way and I have raised the issue several times with my opposite number at Westminster. The Scottish fishing industry raises it with ministers from the Ministry of Agriculture, Fisheries and Food every time it meets them, and MAFF is well aware of our anxiety for the measures to be put in place.

Clearance for the proposals has now been received from the European Commission—as might have been expected, as they are exactly the same as those we had cleared by the Commission some time ago—and the lawyers have drafted the regulation. It is now just a case of following the parliamentary procedure.

Richard Lochhead: Should not the minister write a stropky letter to the UK minister to get the matter on the record and ensure that the situation is not repeated?

Rhona Brankin: There are many ways of making one's point forcibly. I assure the committee that Mr Morley is in no doubt about the feelings of the Parliament, the committee and myself on the matter.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): The focus has been on the North sea. I would like us to turn to the west coast and pursue the revelation that Mr Feeley has made this afternoon. Does the minister agree that there was no justification for the substantial reduction in prawn quotas off the west coast?

Rhona Brankin: We followed scientific advice on the nephrops quota. As I said, we can use retrospective data on the nephrops fishery. We have found that there is a discrepancy in how much cod bycatch there is in that fishery. As I have said before—probably at this committee—there is a disparity between parts of that fishery. For example, creel fishery produces no cod bycatch, whereas there is a significant cod bycatch from Fladden bank. We are arguing forcibly for an increase in the nephrops quota; that work is on-going. It is important that we have secured an agreement to use existing information and retrospective data. We will issue proposals as early as possible in the spring.

14:15

Fergus Ewing: We all accept that it is the aim of the Executive and the industry to roll over the nephrops quota, so that it will be the same this year as last year. However, has enough work been done to obtain the logbook data to make that case to the European Commission? What further work must be done before the Commission can be asked to roll over the quota?

Derek Feeley: We have all the logbook data we need. We must now refine them and put them into a form that will be acceptable to the Commission. It is important that we have a coherent set of arguments to present to the Commission, as we will get only one chance to put our case and we must ensure that it is as strong as possible.

We must also get data from other fisheries departments on the relationship between cod catch and nephrops catch for fishermen from countries in the International Council for the Exploration of the Sea area 6. We are getting those data at the moment. We hope to have the well argued, fully researched case that the minister described to put to the Commission in the spring. That should give ample time before the key months for the nephrops fishery, which are the summer months and the lead-up to Christmas.

Fergus Ewing: I was reassured by the first part of that answer, because you seem to have the data that you need, although I presume that you will consult the Mallaig and North West Fishermen's Association. However, you say that the proposal will not be put to the Commission until the spring. Given the importance of the matter, can you tell us the earliest date on which a substantial, well documented proposal could be produced?

Derek Feeley: I said that we have all the data about landings into Scotland, which are the data that we collect. However, that is not the whole story with regard to landings of nephrops from ICES area 6—it is the vast bulk of the story, but

not the whole story. To get a complete picture, we require data on the combined catches of nephrops and cod that fishermen from other parts of the UK, and possibly from other member states, have landed. We are actively pursuing that information and will pull the data together as quickly as we can. I cannot give a precise date for the availability of that information. You may have thought that I was being evasive by saying that it will be available in the spring.

Fergus Ewing: I did not use the word evasive and I would not make that charge. We all want to pin down the information, because we all seek the same aim. I am partly reassured by your answer, Mr Feeley.

Many fishermen from the west coast are concerned that the closures in the North sea, along with other measures, will lead fishermen who are inhibited by the closures to turn to the west. Producer organisations with west coast quotas will obviously be fishing off the west coast, rather than in the North sea. Do you know how many boats that have traditionally fished in the North sea will turn to the west and how many boats have west coast quotas?

Derek Feeley: I do not have that information with me.

Fergus Ewing: Perhaps you could obtain it.

Derek Feeley: It is available to us and I could obtain it.

Rhona Brankin: We could let the committee have that information. We need to consider the possible impact of the closures on the west coast industry.

Fergus Ewing: Does not that re-emphasise the case for a temporary tie-up of boats in the affected areas?

Rhona Brankin: We do not think that tie-ups are the way forward.

Fergus Ewing: I believe that the Catalan fleet is presently laid up at European expense. Is that wrong?

Rhona Brankin: I would not like to comment because I do not know the detail of what the Catalans are doing.

Fergus Ewing: The Mallaig and North West Fishermen's Association is also concerned about a matter that I raised on 18 January. The industry has been promised sight of a draft statutory instrument that will introduce scallop technical measures. The association has been told that the draft instrument was held up first by the Scottish Executive legal department and is now being held up by MAFF. In the debate on 18 January, I asked what the current position was and when the delay would end and progress would be made. Could

you answer those questions this afternoon?

Derek Feeley: I will address your point about vessels that are registered in north-east ports fishing against west of Scotland quotas. They have always done so, so there is no difference. They will be limited in the extent to which they can do so by the fact that the west of Scotland whitefish quotas are much reduced. We are aware of the risk of displacement but we believe that it is not as severe as one might imagine.

We have had scallop technical conservation measures in mind for some time and we want to move quickly to consultation on them. We believe that there is an appetite for such measures in the industry. The measures were held up at MAFF because we were trying to obtain a definition of a "French dredge". French dredges are instruments that are used to take scallops, mainly in fisheries off the south-east coast of England. That work has been superseded by a recent decision to ban French dredges altogether, which should enable us to move with some haste on scallop technical conservation measures. I fear that Fergus Ewing will ask me again when that will happen. I think that we should be in a position to consult in two to three weeks' time.

Fergus Ewing: I am pleased that those who have banned the French dredge have saved the blushes of the parliamentary draftsmen in MAFF.

Why, if decommissioning has not been ruled out, is there no reference to the possibility of a decommissioning scheme in "Working Together for Scotland: A Programme for Government", which was announced yesterday?

Rhona Brankin: Given that we are at the early stage of considering the impact of decommissioning, we could not be expected to include it as a definite commitment in the programme for government. I repeat that I am having talks with the fishermen, as I undertook to do following the outcome of negotiations on the cod recovery plan. I will meet the fishermen this afternoon and we will make a start on that process. It is unreasonable to expect a commitment on that in the programme for government at such an early stage in the process.

I assure Fergus Ewing that whatever appears in the programme for government does not necessarily affect the discussions that we are holding. I repeat—I am sure that Fergus Ewing will be delighted to hear me say this—that nothing is ruled out and nothing is ruled in.

Fergus Ewing: I am delighted to hear that although decommissioning has not been ruled in the programme for government, it has not been ruled out—it may have been included in invisible ink. I am assured that any effective decommissioning scheme must be carefully

considered. Indeed, Richard Lochhead presaged that in his question.

If the minister's discussion with the representative bodies, including the Scottish Fishermen's Federation, the Mallaig and North West Fishermen's Association and others, results in their calling unanimously for a decommissioning scheme, will they have her backing?

Rhona Brankin: Fergus, you can ask me that until you are blue in the face, but I cannot back any particular plan at this stage. We do not have a particular plan on the table. I can only reiterate that we have asked the fishermen's organisations to present ideas supported by details and statistics, and we will do so ourselves. We are holding an initial meeting this afternoon and we will continue to work with those organisations to ensure that we have a long-term, viable fishing industry.

The Convener: I am aware that the minister wants to get away because she has a meeting with fishermen's leaders today. Are there any more questions?

Mr McGrigor: Will the minister propose total allowable catches for the deep water species that do not have them, so that we will avoid overfishing of those species if they are affected by diversion?

Rhona Brankin: As Mr McGrigor knows, that issue will come up again next year and discussions will be held this year.

Mr McGrigor: Is that thinking ahead towards—

Rhona Brankin: Thinking is going on. TACs are not necessarily the only option, although clearly we have to consider protecting the deep water species. We know very little about those species and at the December council we were very concerned that no hurried decisions should be made. That is why the issue has been put back—so that we can continue to discuss it.

Mr McGrigor: Mr Feeley said that it was decided not to discuss the plan for the west coast. Who decided that?

Derek Feeley: There was a discussion among member states in Brussels last week. I gave the views of the Scottish industry leaders—who were present—on the best approach. There was agreement among the member states, and between the Executive and the industry, that the best course of action was to set consideration of the west of Scotland to one side until the North sea discussions had been concluded and then, as I said earlier, to pick it up as a matter of some urgency.

Mr McGrigor: Was it considered that that course of action would probably cause a diversion on to the stocks of another area?

Derek Feeley: We recognised that risk, but we thought that discussions that were targeted at the needs of the west of Scotland were likely to be more beneficial than having what is, after all, a much larger fishery in the North sea dominating the discussions of what should happen in the west of Scotland. The risk was that the prescription for the North sea would not necessarily be the best for the west of Scotland.

The Convener: I thank the minister for coming along once again. I also thank her officials.

Subordinate Legislation

The Convener: We have before us a series of statutory instruments. The first is the Agricultural Business Development Scheme (Scotland) Regulations 2000 (SSI 2000/448). The instrument was laid on 21 December and we have been designated as the lead committee. It was circulated to members on 9 January and the clerk has not received any comments. It will be dealt with under the negative procedure, which means that we have up to 40 days in which to choose to annul it.

I am not suggesting that we will necessarily take that course, but we have officials here today so that we can have questions answered and decide whether we need to do any further work in this area. I welcome Henry Snedden, Paul Cackette and Jim Stephen, who can answer questions on the instrument if that is necessary.

We are required to report on the instrument by 12 February. The Subordinate Legislation Committee considered the instrument on 9 January; members should have that committee's third report. This committee raised some points, which are attached at the end of the instrument, on the relevant Subordinate Legislation Committee report. Do any issues arising from this instrument require clarification?

14:30

Fergus Ewing: This instrument, which sets out an agricultural business development scheme, follows on from the famous, or infamous, agricultural business improvement scheme, the handling of which I think everyone agrees was a fiasco. Is this scheme seen as a son of ABIS? Will the people who were encouraged by Lord Sewel to apply under ABIS—many of whom spent a huge amount of money but discovered at the last minute that, for various reasons that we do not have time to go into now, they were unsuccessful—be eligible under this scheme?

Jim Stephen (Scottish Executive Rural Affairs Department): The ABDS Scottish statutory instrument, which you have today, is part of the new Highlands and Islands structural fund programme, which is the successor programme to objective 1. The scheme has been designed with completely different objectives in mind. It is to assist businesses, farmers and crofters in the Highlands and Islands who wish to restructure or diversify their businesses. The scheme has been designed by a partnership of Highlands and Islands organisations, the Scottish Crofters Union, the National Farmers Union Scotland and the Scottish Landowners Federation, which are

content that the scheme is the right vehicle to deliver the objectives that are set out in the Highlands and Islands special transitional programme.

It is a different scheme with different objectives. It is also a different pot of money. It is a completely new budget from Europe and comes from the €308 million that was agreed for the Highlands and Islands special transitional programme at the Berlin summit. The short answer to your question is that it is a different scheme with different objectives, but farmers and crofters in the Highlands and Islands who meet the eligibility criteria will be able to apply for assistance.

Fergus Ewing: Who of those who were eligible for ABIS will be ineligible for this scheme?

Jim Stephen: The menu of items that are eligible for support under the ABDS is shorter than that under ABIS, but if someone wishes to look at new ways of generating income or wishes to restructure their business to meet the economic challenges that are ahead of the industry, they should be able to apply, provided that they meet the eligibility criteria for farmers or crofters.

Fergus Ewing: I am pleased to see that the instrument defines an eligible person as

"a person who is a legal occupier of an agricultural unit".

I presume that that includes tenant farmers, as well as farmers or crofters who own their own farms or crofts.

Jim Stephen: That is correct.

Fergus Ewing: One of the problems of ABIS was that there was a late surge of entries after the rules were eventually relaxed in the spring of the last year of the scheme. What system is being put in place in this scheme to ensure that there will be a reasonable take-up of the total available funding in the first year of the scheme? Are you able to tell us how much money has already been committed from the scheme and what the total pot of money for the scheme is?

Jim Stephen: This time, we have completely different delivery arrangements. Part of the problem with ABIS was that the value of the applications we received in the last 12 weeks of the scheme almost exceeded the total funding over the programme's six years. This time, we will take a tranche-funding approach, which will let us know what we are committed to at any one point and what is left in the budget.

Furthermore, the farming and crofting organisations will act as observers on the committee that will score and assess projects. That way, we should receive better early warning of any emerging trends or problems at local level. The tranche-funding method improves our

financial control of the scheme. Overall, we reckon that we have about £25 million for 2000 to 2006; however, that is subject to fluctuations in the sterling-euro exchange rate.

Fergus Ewing: You mentioned that you can identify the tranches of money that have been made available. How much has been made available to date?

Jim Stephen: Nothing as yet. We are here today partly because the first official meeting to score and assess projects will take place in Inverness this Friday. I understand that we have 70 applications to consider, but we have not committed any money from the scheme as yet.

Fergus Ewing: Will favourable consideration be given to applications from crofters and small hill farmers who will lose out fairly massively under the new less favoured areas deal?

Jim Stephen: No, I do not think that there will be that kind of preferential treatment. The scheme is open to farmers, crofters and members of farming and crofting families in the Highlands and Islands. The allocation of grants will be based on the strength of and the justification set out in individuals' business plans, which we can also fund under the scheme. The two schemes are entirely separate.

Richard Lochhead: For strange historical reasons, rural Aberdeenshire is not the Highlands and Islands. What is the equivalent legislation to help farmers diversify in Aberdeenshire?

Jim Stephen: We are working on a new scheme called the farm business development scheme which will cover all rural areas of lowland Scotland. We had to give priority to the Highlands and Islands because of the time scales within which the new structural funds programme for the area had to be delivered. However, work is pretty well advanced on the farm business development scheme, which will cover the creation of new income-generating opportunities for farming families in lowland Scotland, including rural Aberdeenshire.

Richard Lochhead: What is the time scale for delivering that scheme? Does it have a predecessor?

Jim Stephen: We have submitted a state aid notification to Brussels. Furthermore, we are working with our legal colleagues on legislation and we are quite well advanced with the scheme literature. As a result, I hope that the scheme will not be too long in coming. We will make an announcement as soon as possible.

The predecessor was the rural diversification programme, which was a regional scheme under the objective 5b programmes and, as such, was part of a wider structural funds programme for the

area. Apparently the scheme was well received and spent up to budget, and it had the scope to do much more to help farmers in the area. That is what we will be doing under the new scheme.

Richard Lochhead: Is there any indication of funding for the new scheme in lowland Scotland, as the rural bits of Deeside are called?

Jim Stephen: We do not have regional budgets. However, new marketing and processing schemes are coming on-stream over the period to assist small-scale and large-scale processing of agricultural products. We reckon that we will have about £77 million in total over the period 2001 to 2007.

The Convener: I am delighted to hear that Richard Lochhead is promoting rural Deeside as well. I will move on immediately to Mike Rumbles.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I was just going to pick up on that point. I represent West Aberdeenshire, and—

Richard Lochhead: So do I.

Mr Rumbles: People who live in the Cairngorm area of my constituency will be interested to learn that Jim Stephen believes that they live in lowland Scotland. That was an interesting use of terminology. He was, of course, referring to the Highlands and Islands region, rather than to the Highlands of Scotland.

My question is on the points that were raised in the report of the Subordinate Legislation Committee, which said:

"The Committee considered there might be a reasonable argument that the Regulations, by not including provisions for appeals to an independent tribunal against decisions of the Scottish Ministers, thereby contravened Article 6 of the ECHR."

SERAD's response to the committee was:

"The Executive considers that the Regulations do not contravene Article 6 . . . Insofar as there is any determination of civil rights . . . Article 6 compliance is achieved by the availability of the remedy of judicial review in relation to a decision under the Regulations."

Judicial review is available to anyone on any subject—[*Interruption.*] Fergus Ewing has just reminded me that it is an extremely expensive process. The Executive response seems strange—it is not a specific response. Could you elucidate what SERAD's response means?

Paul Cackette (Scottish Executive Rural Affairs Department): Perhaps I can answer that question.

The remedy of judicial review is not available to every person in every circumstance; it is available to persons who wish to challenge the reasonableness or rationality of decisions made by public bodies. It is not possible to use judicial

review for the general determination of rights between two private individuals.

Judicial review is the traditional, standard way in which the courts exercise a check on the reasonableness and rationality of the actions of public bodies. The particular nature of the scheme that is set out in the regulations involves eligible persons making an application to the Scottish ministers that seeks the award of financial assistance if they meet the objectives under regulation 3. That process involves the exercise of discretion by the Scottish ministers and, in our view, judicial review is the most appropriate means by which people can challenge in a higher court the wrongful exercise of that discretion. It is certainly the case that judicial review is not cheap, but going to law is never cheap.

SERAD's response must be seen in the context of the other remedies that are available to persons who are unhappy about the way in which the Scottish ministers exercise their discretion. If such persons believe that their case has been dealt with in such a way that it constitutes maladministration, they can make representations to the Scottish Executive directly or by writing to their MSPs and they can complain to the ombudsman. Judicial review is only one of a range of remedies that would be available to a person who is dissatisfied with the way in which their application has been considered.

Mr Rumbles: I do not want to get into semantics, but when I said that judicial review is open to everyone, I was referring to the point that you just made about decisions that are made by governmental organisations. A judge can be asked to overturn such decisions, but judicial review is the end-of-the-line approach. The other points that you made were very general.

Should not there be an automatic appeal mechanism? We are not just talking about the applications, because regulation 12 talks about appeal against

"Revocation of approval and reduction"

and the

"withholding . . . of financial assistance".

It seemed to the Subordinate Legislation Committee, and it seems to me, that the situation is not quite satisfactory.

Paul Cackette: The Executive's position on the question raised by the Subordinate Legislation Committee is that, as a matter of law, it is not necessary to have an appeals mechanism.

Mr Rumbles: Is it good practice?

Paul Cackette: It may or may not be good practice, depending on the circumstances of the decision that is subject to review. The Subordinate

Legislation Committee makes the point that an independent appeal may make sense when questions of fact are in dispute and one person says X is the case while another says Y is the case, because the person who determines the facts might get them wrong.

14:45

The scheme does not involve such decisions; it involves the exercise of discretion by the Scottish ministers. If that discretion is exercised in a way that is wrong in law, judicial review provides a remedy. If a simpler remedy were sought through a shorter appeal process, the decision would be reviewed and taken by the appeal body, instead of the Scottish ministers. The appeal body would have to exercise the discretion. The Scottish ministers will not determine facts. The Subordinate Legislation Committee fairly made the point that factual reviews can provide arguments for appeals. However, the scheme does not involve the determination of such issues.

Mr Rumbles: Does not the scheme involve factual matters?

Paul Cackette: The scheme does not require ministers to determine whether one person's version of the facts is to be believed over another person's; the Executive exercises discretion to grant a scheme. An application form is received and, unless something is obviously wrong with it, it will be taken at face value.

Mr Rumbles: Surely that is the point. Mistakes can be made in decisions and there is no means of putting them right.

Paul Cackette: There are various means of putting mistakes right. If a person thinks that the Scottish Executive has got the wrong end of the stick, they can ask the Executive to reconsider their application. If an obvious mistake is made, people can complain to the ombudsman or write to their MSP.

Mr Rumbles: Nevertheless, the Executive can just say no.

Paul Cackette: I agree with the proposition that going to court should always be a last resort. We hope that that would happen only in the smallest number of cases possible. However, the Executive accepts that it is proper to have checks and balances, to ensure that it acts within the law. If the available measures could not provide a remedy, it would be proper to have a formal legal remedy and check on the actions, or a test of the reasonableness of the Executive's decision. Judicial review is the most appropriate mechanism for checking the exercise of discretion.

Mr Rumbles: As far as I can see, a problem has been flagged up, to which I would like to return.

Rhoda Grant: Can people who applied for ABIS and had drawn up business plans to back their applications reuse those plans if they meet the criteria for the new scheme? The expense of drawing up a new business plan might be prohibitive.

Jim Stephen: Under ABIS, a full business plan was not required. Instead, a document called a resource audit was required, which had all the best intentions for identifying priorities for investment. In discussions with the industry during the design phase of the new scheme, there was general agreement that the resource audit fell short of being a useful management tool for the farmer or crofter, or for the new scheme's objectives.

As part of the ABDS, a much more substantive business plan will be required, which the farming and crofting organisations have endorsed with us as a good way of producing a detailed business plan for the unit or the farm or croft business. The short answer is that a resource audit under ABIS will not meet the requirements of the new scheme. I hope that we are putting in place a more substantive document that will be genuinely valuable to the people who assess applications under the new scheme, and to the producer.

Rhoda Grant: Will there be assistance and funding for that?

Jim Stephen: Yes.

Alex Fergusson (South of Scotland) (Con): This follows on from Rhoda Grant's last question. I was surprised to hear that answer because my recollection, from when we questioned the minister following the rather messy end of ABIS, was that some thought would be given to prioritising the claims of those who had been caught out by the rather abrupt ending of that scheme when a new scheme was drawn up. Is there any linkage between applicants under ABIS, who were caught out, and the new scheme?

Jim Stephen: There is a linkage.

We were well aware that many people incurred expenditure on matters such as planning applications. Depending on the duration of the planning approval, planning approval gained for an ABIS-related project may well serve for an ABDS project. I hope that that expenditure will not be wasted if people are willing to reapply under the new scheme.

Alex Fergusson: That is gratifying to know. Thank you for that answer.

Under the terms of the instrument, Scottish ministers can vary the approval or amend the conditions of the scheme at any time. However, they are obliged to give "reasonable notice". I suspect that what is deemed to be reasonable

notice by the ministers might not be deemed to be so by the individual who is applying under the scheme. Can you define reasonable notice?

Jim Stephen: Paul Cackette can comment on the legal side.

I can say that the scheme is not as rigid in its deadlines and penalties as the more mainstream common agricultural policy schemes. We would always try to be flexible and to take as helpful and positive a line as we could with producers. If a breach of conditions was identified, the applicant in question would have an opportunity to present his or her case to Scottish ministers; we would make a decision based on the strength of the case that was presented to us.

Paul Cackette: I am not sure that I can add much more to that, other than to say that the notice should be reasonable in all the circumstances that arise. Those circumstances would include matters such as the opportunity to have time to make representations and, crucially, what the consequences of the variation would be on the person who is affected. Variations can be relatively minor, in which case the consequences might be slightly less important, but they can also be very significant. It is perhaps stating the obvious to say that the more significant the consequences on the affected person, the longer it would be reasonable to give them to prepare an argument that variation should not take place.

Alex Fergusson: The rural development programme has been mentioned. I agree that it has been extremely successful outwith the Highlands and Islands; it was certainly well used and effectively used in my part of the country in the south-west.

Why has there been such a gap between the ending of that tranche of funding and the introduction of a new programme to take its place? That has not been without effect.

Jim Stephen: The rural diversification programme was part of the last round of EU structural funds programmes for the four areas of Scotland designated as objective 5b. To meet the regulatory requirements, the schemes closed for applications at the end of December 1999, but we have two years beyond that to process claims. Provided that the producer got his or her approval by December 1999, they still would have two years beyond that to complete and claim for their work. That is on-going in the Scottish Executive rural affairs department.

The gap was caused by the need to negotiate a new regulation, which was regulation 1257/1999, on support for rural development. We then had to prepare the rural development plan for Scotland, negotiate it with the European Commission and make the best of the European resources made

available to us.

That is what we have done. The programme was approved by the European Commission STAR Committee in October 2000 and formally approved by the Commission in December 2000. It was a case of starting with a new regulation while trying to close the schemes that still have a fair flow of claims being processed. That is the reason for the hiatus between the closure of the rural diversification programme and the launch of new schemes under the new regulation.

Alex Fergusson: Thank you for that answer, but I think that you would accept that it is not entirely ideal that there is such a hiatus. Whose lack of forward thinking led to that? Had the negotiations for the new scheme started about a year earlier, presumably the agency that was providing the funding on the ground—which, in my part of the world, Galloway, has packed up with loss of jobs—could have continued to the benefit of all concerned.

Jim Stephen: The regulation had to be negotiated. We needed a piece of Community law to back the new schemes and then we had to get on with writing the programmes. I do not think that any fault was involved, but it was necessary to go through legal hoops and negotiations to secure the European Commission's agreement to provide European agricultural guarantee and guidance funding for the rural development programme.

Fergus Ewing: My question follows on from your response to Rhoda Grant's question. I have studied regulation 4, which sets out requirements for the business plans that must be submitted. My reading of that regulation is that nothing would preclude someone who submitted a business plan under ABIS and whose application was unsuccessful from resubmitting that business plan and receiving payment of up to £400, provided that the plan submitted under ABIS was for a purpose, such as diversification, that qualified under the new regulations. Am I right?

Jim Stephen: With respect, no.

Fergus Ewing: Can you tell me why not? If there are proposals under ABIS that should qualify under the new scheme, such as for diversification, it beggars belief that people who have gone to massive expense in preparing an application for a scheme that was mishandled now find that, although the application is for a purpose that falls within the scheme and is still relevant, they have spent all that money on a business plan and still cannot recoup it.

Jim Stephen: The ABIS resource audit was not a business plan. It ran to only a few pages and is now regarded by many, including farming and crofting organisations, as something that fell short of a business plan. People who applied for

resource audits under ABIS may have been funded for them, although they may not have received approval for a full-scale application because of time factors. We have a model business plan for the ABDS, which is a significant improvement on the ABIS resource audit. That is what we will be supporting under the new scheme. It would not take a great deal of effort or time to transfer information from an ABIS resource audit to an ABDS business plan, but we require more information and analysis this time, so that the outcome resembles a proper business plan rather than the thinner resource audit that was a feature of ABIS.

Fergus Ewing: I am very surprised indeed by your evidence and by your earlier response to Rhoda Grant, when you said that the business plan under the new scheme was much more substantive. I know from a huge postbag of complaints from constituents that some of them spent thousands of pounds just to get the paperwork right to submit ABIS applications. I am, frankly, flabbergasted that you are describing this scheme as requiring a much more substantial effort by way of paperwork than ABIS. God help the applicants if that is the case.

Many people who apply under this scheme will have applied under the previous scheme for the same purpose. If they spent up to £400 on an independent adviser under the previous scheme, will they be able to recoup that?

15:00

Jim Stephen: No.

Fergus Ewing: Should not the rules be redrafted to allow that money to be recouped? The reimbursement of the money that they spent on the basis of Lord Sewel's undertaking, which has been well documented, would ensure that natural justice was served.

Jim Stephen: I appreciate what you are saying, but, as I said earlier, the scheme is entirely different and has an entirely different administrative and legal structure. I hope that people who were unsuccessful under ABIS will be able to reapply and secure the grant for their projects this time around. That is everyone's genuine wish. I reiterate the fact that the new scheme and all the arrangements that go with it have been developed not just by the Scottish Executive rural affairs department but by the wider partnership of Highlands and Islands bodies and the industry representatives, who are happy with what we have put in place and with the appeals and complaints mechanisms that are built into the scheme. We are proceeding on that basis.

The Convener: We are coming close to the time when we will have to decide how we are to

proceed. Does Mike Rumbles wish to comment?

Mr Rumbles: Yes. Mr Stephen, you indicated earlier that you did not think that it was necessary to have an appeals mechanism because of the availability of the judicial reviews process and the Scottish Parliament's ombudsman, although he examines maladministration rather than challenging the decision. However, that response is curious. It suggests that you are opposed to the appeals mechanism in principle, but the excellent document that was produced yesterday, "Working together for Scotland", contains a contribution from your department that reads:

"Aim: To operate fair and effective systems for paying support to farmers

We will introduce by autumn 2000 an independent appeals mechanism for farmers suffering penalties in relation to their EU subsidy claims."

It seems that an appeals mechanism is okay for EU subsidy claims but not for the ABDS. I cannot understand the principles involved.

Jim Stephen: I am perfectly aware of that comment in the programme for government. Bear in mind our comments that the ABDS requires a high degree of discretion. My understanding is that the appeals mechanism for EU subsidy schemes is intended to address concerns about or representations against schemes that are obligatory on member states—the mainstream common agricultural policy's livestock and arable schemes—and which operate within rigid legal frameworks. The criticism of the department in the past has been that we have allegedly taken a heavy-handed approach to people who have missed deadlines for claims or whatever. The ABDS is different from the mainstream EU subsidy schemes in that it is highly discretionary.

We may face situations in the Highlands and Islands in which the local needs and priorities of one area suggest that funding is required for farm-based tourism, but the local needs of another—where there is a surplus of such tourism—do not. A degree of discretion in decisions about funding in such situations will be required. That is why regional, national and industry bodies must be involved in the assessment process. A clear distinction should be drawn between this capital investment scheme and the mainstream EU subsidy schemes, which tend to be land based or livestock based.

Mr Rumbles: You have drawn a distinction between the two schemes. However, you have not explained the *raison d'être*—why is an appeals mechanism appropriate for one kind of scheme and not the other? You also said that the scheme that we are discussing today is discretionary. Surely that is a greater reason for having an appeals mechanism; it is certainly not a lesser

reason. Before we discuss how we should proceed, I would like to say that I am certain that that approach is wrong. I do not want to hold up the scheme, which came into force yesterday, but I hope that when the department considers such schemes in future, it will take on board its own philosophy and apply that to any regulations it proposes.

Fergus Ewing: I draw your attention to regulation 5, which sets out the rules governing applications to the fund. Regulation 5(2)(g) states that the application must include

"confirmation that public funding towards the cost of the measure has not been sought otherwise than under these Regulations and that it is not intended to seek such funding."

That means that people who had already applied for a diversification scheme under ABIS would be ineligible for consideration under the new scheme. Do you agree with that interpretation?

Jim Stephen: No. That subparagraph seeks to avoid the double funding of schemes. If a person is receiving a grant from the department for a project, we want to ensure that they are not getting a grant for the same project from a local enterprise company, a local authority or another public sector body. If someone was unsuccessful under ABIS, by definition they have not received a grant. Therefore, if they were to reapply under the ABDS, regulation 5(2)(g) would not cause a problem.

Fergus Ewing: I am grateful for that clarification, Mr Stephen. I assume that your evidence has some legal status, but I would ask you to reconsider the issue, because an ordinary reading of the provision might prevent those who have applied previously from obtaining funding. Although regulation 5(2)(g) aims to prevent double funding, it specifically states that those who have previously "sought" funding cannot receive it. If someone has sought funding under ABIS, you do not want to disqualify them from receiving funding under the ABDS. There appears to be a defect in the draftsmanship, which should be corrected. Perhaps you could consider that in more detail and provide a response for the committee before we take a final decision on the regulation.

Rhoda Grant: I have a suggestion to make. Someone said earlier that the regulations could be amended by Scottish ministers at any time. Rather than hold back the regulations, we might write to the minister with our concerns. We could ask the Executive to reconsider a provision in respect of the people who applied for ABIS—not guaranteeing them money from the new scheme, but putting them at the front of the queue. We could make those points and ask the minister to consider amending the regulations under the appropriate provision. We do not want to hold up a scheme that will pay out much-needed money.

Alex Fergusson: The relevant provision on amending conditions is found in regulation 6(1)(c).

The Convener: We have the option to postpone our decision on the regulations for a further week—we can address the matter at our meeting next week. Therefore, I propose to continue this discussion next week. That gives us an opportunity for further correspondence with the relevant officials and the minister. It also allows the necessary time for a motion of annulment to be lodged, should anyone feel that that is appropriate. If we have made adequate use of the officials here today, I propose to put this item on next week's agenda.

Members indicated agreement.

The Convener: In that case, I thank you for your help, gentlemen.

The next instrument is the Fresh Meat (Beef Controls) (No 2) Amendment (Scotland) Regulations 2000 (SSI 2000/449). We are the secondary committee on that, the lead committee being the Health and Community Care Committee. The instrument has been placed on our agenda so that members can make appropriate comments, which can be passed to the Health and Community Care Committee. I have no comments—does anyone else?

Mrs Mulligan: Item 9 of the Executive note states:

"Until formal arrangements for testing are in place, the Food Standards Agency will try to arrange for any necessary testing".

How strong a commitment is "try to"?

The Convener: That is an interesting comment, but it is really for the Health and Community Care Committee to ask for clarification on that. I am content that the instrument lies firmly in the court of that committee. Unless there is anything that we feel relates directly to the remit of the Rural Development Committee, it is unnecessary for us to comment.

Rhoda Grant: This is a general comment—which concerns this and other instruments before us—to do with the 30-month rule. We should perhaps write for clarification on it, rather than deal with it as part of our discussion. Can we obtain more information on whether the instrument will do away with much of the red tape involved in the 30-month rule? If cattle passports are to identify cattle that are more than 30 months old, as a simple test of whether they are clear of BSE, surely all the administration that currently goes on to get cattle over 30 months on to the market—Highland cattle have a specific problem—could be done away with. If the regulations were simplified, it would mean that if someone is selling a cow for consumption that is over 30 months old, they have

it tested; end of story.

The Convener: It would be reasonable for us to ask for comments on that. I will write to the Executive to ask for an indication of its thoughts on the matter. If there are no further comments, are we content that we do not require to comment on the issue to the Health and Community Care Committee and that we will allow that committee to make up its own mind on it?

Members indicated agreement.

15:15

The Convener: The next instrument is the Feeding Stuffs (Scotland) Regulations 2000 (SSI 2000/453), for which we are the secondary committee. I have a specific concern about the issue. After correspondence—which I understand has been copied to members—I decided that it was appropriate to invite members of the Food Standards Agency Scotland to come here to address that concern. We have with us Colin Forsyth, Caroline Ferguson and Martin Prentice, who have been waiting patiently during the previous discussion.

I felt that it was necessary for us to deal specifically with a point in the instrument on the control of additives to feedingstuffs for animals. When the first European directive referring to the issue was published, it caused uproar in the agricultural press. I received a number of letters to do with the facts that certain vitamin and mineral supplements may be banned for use in animal feed and that certain practices may also be banned. As a result, I corresponded through the clerk with the Food Standards Agency Scotland and I received an indication that some practices might become illegal under the terms of the instrument. That is why we have asked the witnesses to come to the committee.

In my letter, I asked to what extent the provisions of the regulations would

"affect the normal practice of mineral and vitamin supplementation in livestock feeding".

I asked for specific details on

"a) the use of feed blocks,

b) the sprinkling of such supplements on to animal feed,"

and

"c) the mixing of such supplements into farm mixed feed."

The reply that I received stated that there would be no problem with some of the points that I had raised, but it did state that

"the practice of sprinkling supplements onto animal feed would however constitute a non-feed use of additives and would therefore be banned."

That will be a concern to many farmers. I would be

grateful if the witnesses could explain the thinking behind the regulations.

Colin Forsyth (Food Standards Agency Scotland): I would like to give members a little context. The current regulations, which committee members have before them, do not include the non-feed ban, as it has been termed by various people, because of the response to consultations last year and because further European negotiations are in train that may affect the issue. The regulations that members have exclude the provision that was in the draft that was put out for consultation. That would have banned the non-feed delivery of permitted additives. The regulations as now presented will control the delivery of additives in feed, but they do not deal with non-feed delivery. The problems that came to light last year were mainly to do with the non-feed elements of delivery.

There will be an obligation to return to article 9k of directive 96/51/EC, which deals with the issues that the convener raises, but that article has not been implemented in the present regulations. However, that does not mean that it has gone away for ever. Scottish ministers will have to come back to it. The end of the response that the FSA Scotland gave to the committee considers what would happen were the directive to be implemented in its present form. If it were, there would be control of non-feed delivery of additives, which leads us to the question of what exactly non-feed delivery is. As has been said, the practice of using feed blocks and licks is not, according to the regulations, a non-feed use, because they are mixed with materials that are feed and therefore are a complementary feed. They would not, therefore, be banned.

However, the convener has identified an area that would still be a problem—when someone simply sprinkles an additive on top of feedingstuffs such as silage. We would consider that to be outwith the provisions of article 9k, although I repeat that it is not outwith the provisions of the regulations before the committee, because they do not deal with that directive at this stage.

The Convener: Can you indicate the likely time scale for any subsequent instrument that may be introduced and which might have the same effect?

Colin Forsyth: It is difficult to be definitive with regard to any subsequent instrument. The time scale depends partly on our exploring the matter further. A good deal more work remains to be done on the precise impact of the rules. There are also continuing discussions in Europe on the feed additives directive and the nutritional supplements directive, which might impact on the arrangements for controlling non-feed additives.

There is also an obligation on Scottish ministers

to carry forward implementation of directives as they stand. In our response to the Subordinate Legislation Committee earlier this month, we indicated that we could not be certain when the current discussions in Brussels would reach a conclusion. We must continue to prepare policy on the basis of existing Community legislation, and we intend for the position to be resolved before June. Further developments before June might mean that the resolution would be different to that which would have been applied, had the measures been included in the regulations that are before us.

The Convener: Is the instrument therefore likely to come before this committee or the Health and Community Care Committee before the summer recess?

Colin Forsyth: It would be reasonable to speculate that such an instrument will appear. Its precise effects will depend on what progress is made in European discussions in the meantime.

The Convener: If I discover that I am talking to the wrong person in asking this question, please let me know and I will find somebody else to answer it. At present, many farmers have a registration that allows them to use or mix mineral supplements and to sprinkle them on to feed, on farm. That is the same registration that is required for feed manufacturers. Would that registration make it possible for registered farmers to continue with existing practice, or would the registration have no effect on any directives that might be implemented by further legislation?

Colin Forsyth: The fact that farmers were registered would mean that they could produce a properly mixed feed, including the additive. Provided that an additive was incorporated in the feed, that feed would fall within the provisions and would still be allowable, even if the new provision was in place at some stage in the future. If a farmer was in the business of home mixing and mixed the additive properly, knowing what quantity they had added to the feed material, that would be entirely appropriate. Once they had done that proper mixing of a complete feed, they could use that feed with other feeds, for their animals. Ad hoc throwing or sprinkling of the material—without any conscious control of the amount going to particular animals or even the homogenising of the resultant mixture—poses the problem. It might be that a home mixer who mixed extensively would mix in the additive properly, and would not be covered.

Dr Murray: I thought that the point of the meeting was to discuss what is on the agenda. We should be discussing what is in the directives—I do not think that it is appropriate to discuss possible future instruments. Some of the questions that are being asked would be better addressed to

the Executive. This is not the first time this afternoon that we have discussed not matters that are on our agenda, but possible or previous legislation. I suggest that we stick to the agenda, rather than engaging in speculation about other—

The Convener: It is up to me—as a member of this committee—to satisfy myself that there is not a problem with the instrument that is before us.

Dr Murray: But you got assurance from the Executive earlier on.

The Convener: I am happy with the reassurance that I have now received. If, before we progress, there are further questions, I will be delighted to hear them now.

Fergus Ewing: I thought that your questions were apposite and I am pleased that they were raised, convener—I am sure that they are of concern to farmers. Also, you offered the witnesses the courtesy of giving them advance notice of your questions, which seems to be a very helpful approach.

The Convener: If there are no further questions, I thank Colin Forsyth for attending and for helping the committee with this matter.

If members have no further views, I am happy to make no further comment on the instrument to the Health and Community Care Committee.

The next instrument is the Cattle (Identification of Older Animals) (Scotland) Regulations 2001 (SSI 2001/1), which was laid on 9 January and on which we are the designated lead committee. The instrument was circulated to members on 18 January and the clerk has received no comments on it. The instrument is laid under negative procedure, which means that we have 40 days to consider it, but we are required to report on it by 13 February. The Subordinate Legislation Committee considered the instrument on 9 January and raised some points on it. The relevant Subordinate Legislation Committee report has been attached to the document. Are there any comments on the instrument?

Alex Fergusson: The instrument requires cattle that are not already registered to be registered by 29 January. I have received representations from farmers who have been trying desperately to register cattle that had not been registered by 29 January, but have found it impossible to do so because of their inability to contact the registration authority. I do not know whether anybody did not manage to register cattle, but I am concerned that the fact that there were not enough people manning telephones might have put people on the wrong side of European legislation.

The Convener: The programme of retrospective registration of older cattle has been going on for many months, and the vast majority of cattle have

been registered for some time. I am disappointed to hear of such individual cases.

Alex Fergusson: I think that there must be many such cases. One farmer to whom I spoke spent three days trying to get through on the telephone—he called every hour or so, whenever he was near a telephone. He did not manage to get through until he noticed that there was a Welsh-language service, which he thought not many people would be using. I think that he gets full marks for initiative. I hope that people are not caught out by the instrument and find themselves on the wrong side of legislation.

The Convener: Nobody should have been caught out—the scheme has been operating on a voluntary basis for some time. The instrument has the effect of introducing a date on which registration becomes a legal requirement. That is an unusual practice in a statutory instrument, particularly given that the scheme has been working retrospectively for some time.

Fergus Ewing: As long as the Executive does not waltz on the deal.

The Convener: Are there any further comments?

As the lead committee on the instrument, we are required to report on it to Parliament. Is it agreed that we do not wish to draw anything to the attention of Parliament in our report?

Members indicated agreement.

The Convener: The next instrument is the Specified Risk Material Amendment (Scotland) Regulations 2001 (SSI 2001/3), on which the Health and Community Care Committee is the lead committee. We have a secondary role and are afforded the opportunity today to make any comments that we would like to pass on for the consideration of that committee.

Are members content not to pass any comments to the Health and Community Care Committee?

Members indicated agreement.

The Convener: The Specified Risk Material Order Amendment (Scotland) Regulations 2001 (SSI 2001/4) is a similar instrument. Are we content that there is nothing on this instrument to which we want to draw the Health and Community Care Committee's attention?

Members indicated agreement.

15:29

Meeting continued in private until 15:45.

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