

RURAL DEVELOPMENT COMMITTEE

Tuesday 6 February 2001
(*Afternoon*)

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RURAL DEVELOPMENT COMMITTEE

3rd 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

WITNESS

Ross Finnie (Minister for Rural Development)

CLERK TO THE COMMITTEE

Richard Davies

SENIOR ASSISTANT CLERK

Tracey Hawe

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 1

Scottish Parliament

Rural Development Committee

Tuesday 6 February 2001

(Afternoon)

[THE CONVENER *opened the meeting at 14:04*]

The Convener (Alex Johnstone): Ladies and gentlemen, we will make a start. I have received apologies from Jamie Stone who, unfortunately, has been caught by the bad weather and will not be able to join us this afternoon. Richard Lochhead has just arrived so, with the exception of Jamie Stone, we have a full turnout.

Items in Private

The Convener: Item 1 is to consider whether we will take items 4 and 5 in private. Item 5 is to receive a draft report on the Protection of Wild Mammals (Scotland) Bill. It is our usual practice to deal with such reports in private.

Item 4 is a conveners group report on increasing the effectiveness of committees. It has been suggested that we may wish to take that report in private, but I will listen to views on that.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Item 5 is standard stuff. The precedent is well set that we should take draft reports in private, so that we do not give them the status of published reports. However, I see no reason why we should take item 4 in private. I deprecate the apparent trend of committees taking more and more items in private. Deciding not to take this item in private would send out the right message. There are no secrets in this report.

The Convener: I am happy to take item 4 in public, if the committee agrees.

Dr Elaine Murray (Dumfries) (Lab): I, too, am in favour of taking the report on the effectiveness of committees in public. It is worth placing on record our comments on how committees should be organised. We can refer back to such a record if in future our meetings are not structured as they should be.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): I do not have a problem with discussing the issue in public. However, I note that the document that was circulated is marked confidential. I would like clarification on how we deal in public with something that is deemed to be confidential.

The Convener: I understand that there was a

rebellion on this matter at the Justice 1 Committee this morning.

Mrs Margaret Ewing (Moray) (SNP): In my experience, moving into private session leads to much more external speculation, which can lead to later confusion. I am a great believer in discussing things in public. We should definitely take items 4 and 5 in public.

Alex Fergusson (South of Scotland) (Con): I do not agree about item 5. We established the precedent ages ago that we should discuss draft reports in private.

Mrs Ewing: I am a newcomer to the committee.

Alex Fergusson: I have no difficulty with item 4 being discussed in public, if the clarification for which Cathy Jamieson asked can be given.

The Convener: I understand that the paper was discussed in public at the Justice 1 Committee this morning.

Mr Rumbles: As convener of the Standards Committee, I attended the meeting of the conveners group at which this was discussed. I did not understand that this was a confidential paper, even though, as has been pointed out, it says inside that it is confidential.

The Convener: Can I assume that, given the views that have been expressed, the committee is content to take item 4 in public but that, as has been our practice, we will take the draft report on the bill in private?

Members indicated agreement.

Alex Fergusson: On a point of order, convener. Last week, I was asked to provide a copy of a document that we had been given. Nowhere on that document did it say that it was confidential or private, but when the person had tried to obtain a copy directly from the clerk, they had been told, quite reasonably—this is not a complaint against the clerk—that it was a confidential document for discussion by the committee. I discussed the matter with the clerk, and respected that opinion by not passing on a copy.

I think that it would be helpful to have a colour coding system for documents. For example, it is extremely effective to have certain documents on pink paper—one knows that such documents are private and are not to be passed on. It would be helpful if all documents were colour coded so that it would be beyond doubt whether they were confidential. There is obviously some confusion.

The Convener: Indeed, we will look into that.

Before we leave this item, members should know that the only item on the agenda for our meeting next week will be further discussion of the draft report on the Protection of Wild Mammals

(Scotland) Bill. Is it agreed that we take that item in private?

Members *indicated agreement.*

Subordinate Legislation

The Convener: We now move on to item 2. I welcome Ross Finnie, the Minister for Rural Development, and Mike Watson and Martin Prentice, who are his officials. They are here to deal with the Code of Recommendations for the Welfare of Livestock: Sheep (SSI 2001/58). The statutory instrument and a note from the rural affairs department were circulated to members on 18 January. The Subordinate Legislation Committee considered the instrument on 23 January and had no comments to pass on to the lead committee. The instrument will be dealt with by the affirmative procedure, under which the minister will propose a motion for its acceptance and the committee will consider it.

Initially, we will deal with the instrument on a consultative basis with the officials. We can then consider the minister's explanation and ask questions of the minister and the officials. I will then ask the minister formally to propose the motion for consideration. I invite the minister and his officials to explain the instrument.

The Minister for Rural Development (Ross Finnie): The sheep welfare code was drawn up in 1990, since when there have been many changes in the industry. The Farm Animal Welfare Council has produced a report on the welfare of sheep, which the Executive has welcomed. We recognise that it is time for the code to be updated. Members will be aware that welfare codes are made under section 3(1) of the Agriculture (Miscellaneous Provisions) Act 1968.

Codes exist to help stockmen care for animals and are a positive force for improving the welfare of live animals. If a livestock keeper is prosecuted for causing unnecessary pain or distress, a breach of the code can be produced in evidence and may be regarded by the court as tending to establish guilt. The codes have influence and are not just cosmetic. The new sheep code gives farmers useful advice on how to ensure that their animals' ethological needs are met, in accordance with the guiding principles that underlie the directive.

The law states that stock keepers must have access to welfare codes and be familiar with their provisions. Therefore, employers must ensure that staff receive guidance on them. We will send all sheep farmers in Scotland a copy of the code so that they and all their staff have access to it. Unlike the current sheep code, the revised one will apply only in Scotland. Similar codes are being produced in England, Wales and Northern Ireland.

The code contains detailed advice on important matters such as the prevention of disease, the construction of buildings and the provision of food,

water and bedding. I hope that the committee will agree that the format of the revised code is far more user-friendly than that of any of its predecessors. Following the recommendations by the Farm Animal Welfare Council, we have included boxes throughout the document that highlight, alongside advice, the relevant legal requirements. Thus, we are putting all sheep welfare information into one place, which will make it easier for farmers to follow the code. That should be a positive help to the industry in relation to some of its problems. For example, following the code's advice will help to reduce the incidence of sheep scab, which is a cause of major concern in the industry.

The sheep welfare code is the first of a series of codes that will be updated in this way. The next one that I hope to introduce for Parliament's approval is a broiler welfare code, which is currently in preparation.

I hope that I have given the committee some of the background thinking to the code and displayed our commitment to the code and its implementation. I believe that the code and the recently introduced Welfare of Farmed Animals (Scotland) Regulations 2000 are welcome steps to improve farm animal welfare and ensure the application of consistent standards throughout the European Union—for which our farmers have argued strongly. The revised code delivers on those uniform standards and deals with concerns about farm animal welfare, which we are committed to addressing.

We will be happy to answer members' questions on the code.

14:15

The Convener: Thank you, minister. Do members wish to raise any points or questions about the instrument? The committee has one sheep expert.

Alex Fergusson: Perhaps I should respond, as a former sheep farmer—I stress the word “former”. I do not disagree with anything that you said, minister. Not many sheep farmers would disagree with anything that you said, because everybody's primary concern is ensuring that stock are reared in the most healthy and welfare-friendly way.

I hope that the code does not add to the bureaucracy and form filling that our farmers must already undertake, but I am slightly concerned that it might. For instance, I read that

“A written health and welfare programme for all animals should be prepared for each flock.”

As you are well aware, a careful veterinary record must already be kept of all veterinary procedures that have been carried out. Other records also

have to be kept. I wonder whether the new requirement is a slightly unnecessary layer of book filling.

Ross Finnie: If you read that section of the code from the beginning, I think that you will find that it is for advice only.

Alex Fergusson: I accept that. That is fine, but I think that it is a pity when people say that a code is for advice only, so they need not bother about it. It would also be a pity if the code contained some useful or advantageous information that people did not bother about because it involved yet another task that they could not be bothered to do. However, I have no questions about the overall aims of the code and I do not think that anyone in the industry would either.

Ross Finnie: The one important thing is that the code brings together several existing regulations in one volume. To that extent, it represents a reduction in the administrative burden of finding the relevant provisions on maintaining flocks.

The Convener: As there are no further questions, I ask the Minister for Rural Development to move motion S1M-1599 formally.

Motion moved,

That the Rural Development Committee recommends that the Code of Recommendations for the Welfare of Livestock: Sheep (SSI 2001/58) be approved.—[Ross Finnie.]

Motion agreed to.

The Convener: We now move to item 3 on the agenda, which is the Agricultural Business Development Scheme (Scotland) Regulations 2000 (SSI 2000/448), which will be dealt with under the negative procedure. The regulations were laid before Parliament on 21 December. We have been designated the lead committee. The instrument was circulated to members on 9 January, and we discussed it at last week's meeting. The *Official Report* of that meeting was published this morning, and members may wish to refer to it.

As I said, the regulations are subject to the negative procedure, which means that the Parliament has the power to annul them by resolution within 40 days, excluding recess. Therefore, the time limit for parliamentary action expires on 16 February.

The Subordinate Legislation Committee considered the regulations and members should have copies of its report. Fergus Ewing has lodged a motion to annul the instrument. The Minister for Rural Development is here to participate in the debate on that motion, but he will not be entitled to vote on it, should a vote be necessary.

At our meeting on 30 January, we heard

explanations from officials and discussed the order in some detail and the committee decided that further examination of the regulations was necessary. Therefore, I do not intend to allow time to take further evidence from officials. We will move straight to the motion. I will invite Fergus Ewing to speak in support of and move his motion. Following that, the minister will have the opportunity to reply. As other business on today's agenda will take a bit of time, I will consider shortening the debate from the maximum of 90 minutes that standing orders allow.

After the minister has replied to the motion, I will open the debate up to committee members who wish to comment on it. I will close the debate by inviting the minister to reply to the debate and asking the mover of the motion to wind up.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I hope that members will bear with me, as I am recovering from a cold. I may croak, but with any luck I will not croak out before the end of the meeting.

I am grateful that the minister has appeared today. I must explain that the sole purpose of the motion is to ensure that we have effective, not defective, regulation. For that to happen, a defect that I believe was identified during the evidence-taking session last week must be corrected. If it is not, unfortunately that defect may prevent thousands of farmers and crofters in the Highlands from benefiting from the scheme. I believe that none of us would wish that to happen. Were I of the view that there is any other way of dealing with the matter procedurally, I would have availed myself of such a procedural opportunity.

Mr Rumbles: On a point of order, convener. As I understand it, another procedure was open to Fergus Ewing to bring the minister before the committee, but the convener had already agreed to add the motion to the agenda for today's meeting. Therefore, the motion and the debate are facile in the extreme and a complete waste of time. I expect that Fergus will withdraw the motion. I ask him to do that right now. The motion has angered many farmers. Is this a pretend debate or a real debate?

Richard Lochhead (North-East Scotland) (SNP): That is not a point of order; that is hot air.

The Convener: I think that those comments went beyond being a point of order. Within the procedures that are available to members, Fergus Ewing is acting within his rights. As such, he has the opportunity to lodge the motion.

Fergus Ewing: Thank you, convener.

The predecessor of the agricultural business development scheme was the agricultural business improvement scheme. All members will

remember the unfortunate history of that scheme, whose funds were massively oversubscribed after the rules were relaxed on 31 March 1999. According to the Auditor General's report, 3,793 of the 9,422 applications for the scheme were rejected. My understanding is that 3,362 were rejected largely or solely because of a lack of funds, as the scheme was cash limited.

Following that experience, I made representations to the minister on 16 December 1999, on 5 February 2000 and in November 2000. I proposed that an effective replacement scheme be established. Under that scheme, the ABIS losers could have become son-of-ABIS winners. The minister made it clear in broad terms that he would not wish the losers under the previous scheme to be excluded from the new scheme, although I accept that the new scheme is for slightly different purposes.

There are 3,793 losers from the ABIS scheme and many of the purposes of the new scheme are the same as those of the previous scheme—notably restructuring and diversification into areas such as tourism. Unless the instrument for the new scheme is amended, many of those 3,793 losers under ABIS will, because of an error in draftsmanship—a clerical error and nothing else—inevitably lose out. I am sure that no one would wish that to happen.

At last week's meeting, I raised with Jim Stephen, a civil servant who was kind enough to give evidence, the technical defect that I had identified. I had had the relevant papers over the weekend. I suppose that, in an ideal world, it would have been better if I had been able to give notice of the question on Monday morning, because I appreciate that facing questions from former lawyers and other MSPs is not easy.

I will rehearse the question that I put last week. I drew attention to paragraph 5(2)(g), which states:

"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."

I said:

"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?"—[*Official Report, Rural Development Committee*, 30 January 2001; c 1662.]

Jim Stephen replied, "No." He went on to explain that the purpose of the subparagraph was to rule out double funding. That is entirely acceptable—no one would argue otherwise. I then suggested that I disagreed with that interpretation and adhered to my interpretation. Because I disagreed with the evidence we received, which was given in good faith, I felt it necessary to avail myself of the

only procedural option available to ensure that there was a debate at which the Minister for Rural Development was present.

Mr Rumbles made the point that the minister had agreed to come to the committee. I accept that, but my point is that in procedural terms the only avenue that is open to a committee if it feels that there is a major defect in an instrument is to go down the annulment route—the nuclear option. I did not wish—no one would wish—to press that button. Indeed, I never had any intention of doing so; I merely wished to correct a fundamental defect.

Mr Rumbles: On a point of order, convener. Fergus Ewing has again suggested that he has no intention of pressing his motion. Is this appropriate action when he has said that he has no wish to go down this route?

The Convener: To have this debate, it is necessary, first, for Fergus Ewing to speak to his motion, which he is doing, and, secondly, formally to move his motion, which I hope he will do at the end of his speech. We will then hear the minister's reply and there will be an opportunity for committee members to comment. At the end of that debate, Fergus Ewing is free to press his motion, or not.

Rhoda Grant (Highlands and Islands) (Lab): On a point of order, convener. Will there be an opportunity to debate this issue after this process has been gone through? Questions have arisen that I would like answers to. I would also like guidance from the minister.

The Convener: I can assure you that the issues surrounding ABIS remain on the agenda queue for the committee and anything that it is reasonably worth placing on the agenda will be placed on it.

Rhoda Grant: But we need some answers today.

The Convener: The opportunity to get answers today is afforded by this debate.

Fergus Ewing: Convener, I hope that I get time added for stoppages.

The fact that there has been an error with serious consequences was underscored when I communicated with the National Farmers Union of Scotland, which may not have originally understood the point that I made at last week's meeting. The *Official Report* was only published today—obviously, official reporters cannot be everywhere. The NFUS was kind enough to e-mail me:

"thank you for picking up on the minor but very significant drafting error within the ABDS statutory instrument, without which this scheme would have been approved with a major flaw in it . . . The Union was deeply involved in the formulation of the new ABDS, and we were committed to

making sure those applicants who were turned down under ABIS were able to apply for ABDS and our understanding is that this is also the intention of the Executive. That is clearly not reflected in section 5(2)(g)."

I see that Mike Rumbles is taking a very close interest in this document.

Mr Rumbles: You are not reading it all out.

Fergus Ewing: I am not; but you are welcome to a copy.

Mr Rumbles: Thank you.

Fergus Ewing: Part of the e-mail is confidential. I hope that Mike Rumbles will respect that, as I have.

I read out that e-mail because it is fair to say that although the NFUS was closely involved, it was not aware of this defect. Now that it is aware of it, it shares my interpretation. My aim today is to ensure that the error is corrected. I understand informally that the Executive may be disposed to acknowledge that there has been a clerical error that needs to be corrected. If my information is correct, I will be delighted to withdraw the motion. I wish that a procedure to amend statutory instruments was open to MSPs. If there were, I would have resorted to it.

14:30

I wish to address another relevant matter, which is that despite the fact that I sought no publicity whatsoever about this matter last week, I was contacted by a senior journalist of *The Press and Journal* last Wednesday, who said that the Executive had put out a statement that a decision had been taken to cancel a meeting of the project assessment committee, which was due to have met last Friday. I do not know why that decision was taken. I invite the minister to say why it was taken, because it was unnecessary and unhelpful.

I notice that despite the fact that this instrument became law on 29 January and was first studied by us at our meeting on 30 January, the explanatory booklet explaining the rules of the scheme, which uses the wording of the regulation, is dated 30 October. I appreciate that there are technical reasons, because of the lack of European Union approval of the regulation until December, for not bringing forward this statutory instrument, but the point is that the administrative arrangements proceeded on the basis that this programme would go ahead.

I understand that a huge volume of applications has already been processed—perhaps up to a value of more than £1 million; I have no way of knowing—and that many of the people who have submitted applications, which have been processed on the assumption that the programme will be approved, are deeply disappointed that

there has been a delay. I do not know why the project assessment committee meeting was cancelled. It could have gone ahead, just as the administrative arrangements for the scheme went ahead. I am interested to hear from the minister why he felt it necessary to take this step, simply because a member of the SNP lodged a motion in Parliament. I have not noted that the Executive is inclined to take such draconian steps simply because the SNP lodges a motion. I can recall no precedent for that.

In conclusion, I hope that I have made clear why I lodged this motion. I wish that it were possible to pursue this matter in a different way. I look forward to hearing the minister's response. I urge him to announce that there will be a meeting of the project assessment committee as soon as possible. I would have thought that it would be possible to convene such a meeting within a few days, so that the people who are seeking to diversify and restructure their businesses do not have to contend with a delay. I hope that the Executive will acknowledge that, in this instance, a mistake was made—a genuinely innocent one—and that it will now be corrected, so that we can have an effective, not defective, scheme.

I move,

That the Rural Development Committee recommends that nothing further be done under the Agricultural Business Development Scheme (Scotland) Regulations 2000 (SSI 2000/448).

The Convener: I invite Ross Finnie to respond to the motion.

Ross Finnie: I can speak only for myself, although I hope that the generality of what I am about to say applies across the board. If a committee has serious concerns about an Executive proposal it is considering and, as Fergus Ewing said, it believes that an instrument has been rendered defective, it would be sad indeed if the Executive did not take seriously a committee's request that a minister come and give an explanation or acknowledge that an amendment has to be made. The first intimation that I received was that that was precisely what your committee was seeking.

It seems to me that, in some quarters, it is felt that the nuclear option—that phrase has been used—has to be taken. That seems to elevate the matter to a different plane and I do not necessarily regard that as helpful. If you come to me and point out that you have grave reservations about the effectiveness of an instrument, it seems to me that my duty as a minister, irrespective of procedure, is to respond to your points. That is what the Executive ought to do. If the matter has been elevated to annulment, it would seem quite improper for me not to have even a short delay in the process assessment committee, to allow this

matter to be properly resolved. The helpful thing would be for me to address the issue at hand.

Much reference has been made to regulation 5(2)(g). Curiously, and I hope Mr Ewing will not shout at me, I do not agree that he is in the right part of the regulations. I read them extraordinarily carefully and I think that what is wrong is regulation 6(3)(e). I put it to members that regulation 5(2)(g) is, in fact, a method of extracting disclosure of whether someone has applied for a grant in another place—and I am not talking just about ABIS, but about any grant. In the regulation, it is important that people are not actively seeking grants elsewhere and will not benefit from such grants.

In so far as regulation 5(2)(g) is a disclosure requirement, I do not think that it is as flawed as regulation 6(3)(e). Further reading shows that the latter is much more flawed. Regulation 6(3) starts with:

"The Scottish Ministers shall not approve an application".

That depends on the nature of the disclosure. However, regulation 6(3)(e) clearly does not meet my policy requirements and certainly does not meet the requirements of Fergus Ewing and other members of this committee—that any person who has applied to another source but either cannot or will not receive help from that source should not be debarred from receiving a grant under these regulations.

There is a "not" in regulation 5(2)(g) that leads to a double negative effect, but there is nothing wrong with the eliciting of disclosure and that will not be a barrier leading to people being debarred. That happens in regulation 6. Therefore, my proposal—which I make in a positive vein, convener—is to try to make regulation 5(2)(g) clearer. This goes beyond ABIS and I am a bit concerned about people applying for other sources of public funding.

I will explain how I intend to deal with this procedurally in a moment, but an instrument is about to come before this committee in which I will seek to amend regulation 5(2)(g) by substituting text in order, first, to seek confirmation and disclosure as to what public funding, if any, towards the cost of the measure individuals have sought in ways other than through the regulations and, secondly, to seek confirmation that those same individuals will not be seeking funding from any other source. We would therefore have full disclosure—confirmation that the individuals have not received other funding and that they will not be seeking any other funding.

In regulation 6(3)(e), it has to be clear that the requirement that no other public funding has been sought shall not apply where that funding has been sought, but not obtained, for a measure for

which ABDS grant is sought. Fergus Ewing and I are making the same point. Fergus is talking about regulation 5, but I feel that the error arises in regulation 6.

I will repeat those points, but I want to be sure that members understand our position. Within the next seven to 10 days, we will introduce regulations for the Highlands and Islands processing and marketing grant scheme. I propose that the amendments that I have just described be incorporated in those regulations. We will then write to the Presiding Officer to indicate that those amendments, and those amendments alone, would not be subject to the normal 21-day rule. They would therefore come into immediate effect, allowing us to clarify the intention of the regulations that we are discussing today and to proceed as soon as possible. That would still allow the committee to give proper consideration to the Highlands and Islands instruments within the normal period.

Would it help committee members if I repeated my proposal?

Mrs Ewing: Could we have it in black and white?

Ross Finnie: At regulation 5(2)(g), we would first seek confirmation—because there is a requirement for disclosure—about what public funding, if any, has been sought towards the cost of the measure in ways other than under these regulations. Secondly, we would seek confirmation that it was not intended to seek such other funding.

Having dealt with disclosure, we would then address what is perhaps a more fundamental issue. In regulation 6(3), I propose to add a new subparagraph to make it clear that the requirement in regulation 6(3)(e) that no other public funding has been sought shall not apply where public funding has been sought, but not obtained, for a measure for which the ABDS grant is sought.

As I said, for speed, I propose to introduce those amendments as part of the regulations for the Highlands and Islands processing and marketing grant scheme and to intimate to the Presiding Officer that those amendments would take immediate effect, whereas the rest of the regulations would be subject to the 21-day rule.

The Convener: The minister has an appointment at 3 o'clock; it would be courteous of the committee to ensure that he gets away in plenty of time. However, members have an opportunity to contribute. Mike Rumbles, would you like to come in?

Mr Rumbles: I most certainly would like to come in. This whole debate has been completely unnecessary. The procedure that Fergus Ewing

has instigated has been completely unnecessary. In his opening statement, he talked about pressing the nuclear button. In my view, he has no intention of doing so. He is using this debate for—I have to say this—publicity purposes.

Fergus Ewing was very selective in his earlier quote from the e-mail from the National Farmers Union of Scotland, which I peered over his shoulder to read and which, as members saw, he offered to me. I want to read a selection from it, because what Fergus Ewing read does not chime with the reaction of the NFUS to Fergus's outrageous behaviour on this occasion.

Fergus Ewing: On a point of order. I have no objection whatever if Mr Rumbles wants to take up his time on this material. However, I was asked to treat one or two paragraphs from the e-mail in confidence. I have respected that and I trust that Mr Rumbles will also do so.

Mr Rumbles: Of course I will. I assume that anything in the e-mail that is confidential will be marked and I will respect that. Fergus Ewing has already marked the areas that he wanted to read out. There is one sentence that, I think, gives the flavour of the NFUS's position when Fergus Ewing lodged his motion. One has only to read the NFUS's press release to know that. However, the e-mail that Fergus Ewing read out earlier says:

"My concern"—

that is, the concern of the NFUS—

"is that any further delay at this point would cause greater uncertainty and delay grants—something farmers could certainly do without after their experience of the previous scheme!"

I want to place that on record, because that is the position of the NFUS.

Jamie Stone cannot be here today, unfortunately. However, he has asked me to bring his views to the committee's attention. He also feels that Fergus Ewing has got us into an unnecessary procedure. He has been inundated with representations, some of which I have before me, and Fergus Ewing is more than happy to use this—

Richard Lochhead: Will Mike Rumbles let me make a comment at this point?

Mr Rumbles: No—Richard will get a moment to come in shortly. I was most careful not to interrupt.

Richard Lochhead: I always let you intervene, Mike.

Mr Rumbles: I assume that Richard Lochhead will be able to come in later, convener.

Fergus Ewing: Mike Rumbles is on a roll, Richard—you should not disrupt him.

14:45

Mr Rumbles: To return to the main point, Fergus Ewing has got it wrong. He has thrown confusion into the issue. Farmers' genuine concerns have been stirred up by Fergus's procedure. If members of the committee recall what happened last week, I also had concerns about the regulations and I raised them with the civil servants.

I took advice from the convener and that same advice was available to Fergus Ewing: that we could have asked the Minister for Rural Development to come to this meeting—as he has done—and that we could have had a wider debate on the issues that concern us. A number of issues that relate to the regulations are of concern, not only those that have been highlighted by Fergus. It is wrong of him to have used the procedure that he has used. It is my belief that he has no intention of pressing his motion to a vote. He knows the damage that his action is doing to the farming industry in the Highlands and Islands and I am surprised at his behaviour. He has proceeded with what he himself referred to as the use of the nuclear button.

I will now turn to the issue that I hope the minister will address in closing—the appeals mechanism. I raised that matter last week, and it is what I really want to discuss. There is genuine concern about it. Unlike Fergus Ewing, I did not want even to give the impression that I wanted to hold up the entire business scheme for farmers in the Highlands and Islands. However, there are genuine concerns about the inclusion of an appeals mechanism, particularly given that the decisions that will be made by the rural affairs department will be discretionary. The point is that the decisions are not mandatory.

I would be satisfied—as would other people, I think—were the minister at least to state that somebody outside the formal decision-making process in the department will consider someone's appeal, even if he cannot say that there will be a formal appeals mechanism. I think that that would satisfy the requirements of the European convention on human rights and help the rural affairs department. It would help the farmers. I therefore hope that the minister can comment on the feasibility of that suggestion.

Rhoda Grant: I would like clarification of a few points. One is really a matter for this committee. We will normally receive a Scottish statutory instrument before it appears on our committee papers. I understood that that was because, if there were a problem with the SSI, we would have time to call the minister to a meeting for a discussion about it. That has not happened in this case, and we need to highlight the fact that it needs to take place, so that we never get

ourselves into this terrible situation again.

Last week, Jim Stephen gave clarification on the issue. He was quite plain in saying that people who made applications under ABIS would not be disallowed from applying to the ABDS. What is the statutory implication of such comments being made by civil servants to a committee? Are they binding? Can we accept their word? I was happy to accept Jim Stephen's word when he spoke to us on 30 January, which is why I am distressed about the position in which we find ourselves.

I want also to mention some of the effects that will arise. There is confusion among applicants. People have approached me, saying that they are aware that they are not allowed to apply to the ABDS if they have applied to ABIS. People are saying that not because of the nature of the new scheme, but because of the publicity that there has been. I am extremely concerned about that. We need some publicity to say that that is not the case—that, in fact, people who applied under ABIS may apply under the ABDS.

I am also concerned about when the allocations that were to have been made on Friday will be made available. I understand that many of the people who are involved applied for funding for diversification into tourism, for example. If that funding or the agreement to allocate that funding is not forthcoming in the very near future, those people will miss out on the tourist season, which could have a huge consequence for people whose livelihoods are at stake. I do not think that I am overstating that point.

We need first to deal with the issues that brought us to the current situation, but we must look beyond that and ensure that the problems that have occurred are being dealt with quickly and that people do not suffer as a result.

The Convener: Do you wish to comment, Richard?

Richard Lochhead: Since you have given me the opportunity, convener, yes.

The Convener: You were waving earlier. I presumed that that meant that you wished to comment.

Richard Lochhead: I wanted merely to tell the minister that I welcome the concessions that he has made today. Will he acknowledge that he introduced the amendments that he is now proposing only because Fergus Ewing brought the issue to the fore, and that we would not otherwise have amendments to improve the regulations before us today?

I also ask for the minister's advice on the best procedure for the committee to follow, given that our only option is to move a motion for annulment. Is he satisfied that the current legislative process

is proper? Should not there be a third option for the committee to use to avoid Fergus Ewing or other members having to lodge such motions and to avoid similar problems arising again? I have done so previously although, for some strange reason, it was not the subject of criticism by Mike Rumbles. I presume that he will never lodge a motion for annulment, because he disagrees with that procedure.

The Convener: The minister may wish to comment on that in a few moments, but it is very much a question of parliamentary procedure.

Dr Murray: If members refer back to the *Official Report* of last week's meeting, they will find that Rhoda Grant suggested:

"We could make those points and ask the minister to consider amending the regulations under the appropriate provision."

That is what the minister has done. The convener then said:

"I propose to continue this discussion next week. That gives us an opportunity for further correspondence with the relevant officials and the minister."—[*Official Report, Rural Development Committee*, 30 January 2001; c 1662-63.]

That action was in train anyway, without the motion having been lodged.

Richard Lochhead: There was no option—good will was being relied upon.

Mrs Ewing: I am a new member of this committee; I was not present last week because of very personal circumstances. However, I must say that some of the arguments that I have heard would be stronger if people had paid attention to the issues that surrounded previous arguments on ABIS. I wonder why Mike Rumbles, who is now saying that he wants to have a discussion about the appeals system, last year voted in the chamber against a motion on ABIS that covered the issue of the appeals system. Many of my constituents have suffered from the consequences.

I point out to members who are complaining about the adverse publicity about the development scheme that MSPs have a serious duty to explain the technicalities and difficulties to people who approach them about the matter. From a procedural point of view, I have no doubt that the issue had to be brought to the fore. I am grateful for the fact that the minister has accepted the flaws in the procedure and I welcome the points that he has made today.

I want to ask the minister about the disclosure procedure to which he referred, under regulation 5(2)(g). How will that procedure be accessed? Will information have to go to a project assessment committee? Will it come from the local enterprise companies? Will it come from civil servants in the

Scotland Office—the former Scottish Office—or from the Scottish Executive rural affairs department? What will the legal implications of accessing the disclosure be? It sounds fine, but I want to know what will happen, particularly as I have dealt with many people who find that in accessing information, it seems to get lost in the recesses of filing cabinets and computers—which are known to go down on a regular basis.

On a constituency point, the minister referred, in connection with the Highlands and Islands, to a statutory instrument that is to be implemented immediately. Will it include the whole of Moray, only part of which is in the Highlands and Islands Enterprise area? What can I tell the people in the part of my constituency that is outwith the Highlands and Islands Enterprise area who are awaiting a decision?

Mr Rumbles: I want to place on record my disappointment at today's process. Following Fergus Ewing's actions last week, convener, you advised that you would put this item on the agenda; it is down there in black and white and Fergus knew about it. However, today we have had a formal debate, which means, for instance, that we cannot question the minister. That would have been a far more effective approach. The minister was more than willing to attend such a session, during which we could have addressed many issues. Instead, all we have had is a very formalised debate. Members must realise that, as Fergus pointed out, the annulment process is the nuclear option and should be used only when there is no other course of action. At such times, we must work closely with the minister, as is his wish. It brings the committee into disrepute if we go off on such a tangent.

Cathy Jamieson: I did not intend to speak in this debate, because I think that the minister will want to reply to the points that have been raised. However, this afternoon's debate has unhelpfully deteriorated into a party political squabbling session instead of addressing the issue at hand. As a new member of the committee, I am surprised that we have taken up more time with opportunities for individual committee members to run with agendas that are more suited to their local press releases than we have with getting results for the people who need them. I suggest that we hear from the minister and move on with the committee's business.

The Convener: Indeed. That is exactly what we will do now.

Ross Finnie: Although it is tempting, I will not get into the particular procedural issues. If the committee convener invites me in writing to attend a meeting to discuss a matter of substance, as a minister I have some obligation to respond properly to such a request. The phrase "nuclear

option" has been used, but, although I will not get into the debate, it would be regrettable if members felt that such an option was absolutely necessary. I repeat that if I, as Minister for Rural Development, receive a letter from the convener that raises matters of substance, I have an obligation to attend the committee and address those matters. No doubt the clerk has noted the other procedural questions and will know exactly where to find the answers to them.

I will take in reverse order the points that were raised. When I said that I proposed to introduce amendments that would have immediate effect, I should have made it clear that the only element that will have immediate effect will be my amendments; the full 21-days procedure will apply to the rest of the statutory instrument. I do not want to obviate discussion on a matter for which Margaret Ewing clearly has a serious local interest. If she does not mind, we should defer things until that time.

On the issue of disclosure, that requirement is an obligation on the individual who makes the application. Regulation 5(2) of the instrument makes it quite clear that an application must be made in writing by an individual who will reasonably include information on previous applications. We will not be delving into the back rooms and vaults of Highlands and Islands Enterprise, local authorities or otherwise. This represents a simple obligation on the applicant to disclose information on other applications that he or she has made to any other public sources of funding.

On Rhoda Grant's points, I think that we were looking at the wrong paragraph of the regulation, which perhaps meant that the right response was not provided. I am fairly clear that her point might have referred to regulation 5, which I now think we could tidy up. I have no hesitation in saying that the situation is regrettable.

If the committee is minded to approve the instrument this afternoon, we will certainly issue positive news releases in the right places to ensure that applicants come forward. I will then move to reconvene the project assessment committee so that I am seen not to be acting wilfully against any committee or presenting any impediments.

15:00

As for Mike Rumbles's point, although I do not want to get into a legal argument at this rather late stage in the afternoon, I think that we have to use the phrase "appeals procedure" with some caution. I am sure that Mr Ewing would carefully remind me that, particularly in view of the European convention on human rights, describing

a mechanism as an appeals procedure means that there must be some ultimate form of judicial access. That is somewhat burdensome. Perhaps the early stages of the process were not emphasised. Applicants can always write to the project assessment committee if they are unhappy. It is also standard practice in my department that, if someone complains about the way in which an application has been processed by an official, a different member of staff will address that complaint. That brings some objectivity to the early stages of assessment. Furthermore, as the minister, I can always be invited to review a misstatement of fact or a misjudgment.

If somebody feels that they have been misdirected in any scheme in which the Executive—or the project assessment committee—exercises a degree of discretion, they must have recourse to some form of judicial review. However, there are many procedures to be exhausted before that point is reached. As I have said, an applicant can deal with a different official, with the minister, or with the project assessment committee if there are concerns about how the scheme is being administered. I hope that I have answered the questions that have been raised.

The Convener: Thank you. I invite Fergus Ewing to close the debate.

Fergus Ewing: I thank the minister for his remarks. I agree that I was wrong in not spotting that there are two errors, rather than one. However, they are essentially the same error, which had to be corrected. If it had not been, thousands of farmers would have been excluded from the scheme—an aim that none of us ever supported. I welcome the concessions that have been made, which came about because the annulment procedure was used. However, I would have preferred a specific remedy whereby members could propose an amendment to statutory instruments instead of having to use the nuclear deterrent.

Rhoda Grant made the important point that the ABIS losers should be made aware of the fact that the law is being changed to correct the mistake—that is a matter for the minister. However, given that the Scottish Executive rural affairs department has records of each of the 3,700 farmers who were unsuccessful in applying for ABIS, it might be worth considering sending each of them a letter to dispel any confusion that might arise. I noticed that the minister did not explain why the project assessment committee meeting was cancelled; that cancellation was neither necessary nor helpful. Furthermore, the minister did not state when the project assessment committee meeting will go ahead. However, I hope that it will go ahead as quickly as possible. I seek to withdraw

my motion, on the basis of the assurances that have been given.

Mr Rumbles: Surprise, surprise.

Motion, by agreement, withdrawn.

The Convener: I thank the minister and his officials for dealing with this matter today.

There appears to be a move afoot to have a two-minute break before we continue with item 4. I therefore propose an adjournment of two minutes.

15:05

Meeting adjourned.

15:11

On resuming—

The Convener: I reconvene the meeting, after the longest two minutes in history. Let us move directly to item 4 on the agenda, which we agreed previously to consider in public.

Committee Effectiveness

The Convener: Item 4 is consideration of the conveners group paper “Increasing the Effectiveness of Committees”. The paper sets out some aspirations for making committees more effective. Along with Mike Rumbles, in another capacity, I was party to the discussion of the paper at the conveners group meeting. Are there any comments or questions on it?

Mrs Ewing: There are many good ideas in the paper. However, I suspect that the fact-finding visits that we are planning will be fairly expensive and complex. Are there budgetary implications for that and has any decision been reached on how budgets will be divided among the various committees? Rhoda Grant and I were just talking about the difficulties of travelling from the Highlands. There should be clarification of the issue, as journalists could have a great deal of fun with it if we did not make our position clear.

On the development of best practice among conveners, it would be helpful if conveners had pre-meeting discussions with members. I am sure that you will do that, convener. This is the first time that I have served on a committee of the Scottish Parliament, unlike others who may have served on other committees, if not this one.

The paper also states that

“A total of 117 reports were produced”

by committees. I wonder how many of those reports have led to legislative progress and what the time scale is for such progress.

I have strong reservations about amending standing orders to allow committees to meet at the same time as the whole Parliament. I suffered from that practice in my previous position at Westminster.

The committee may be landed with a lot of legislative or pre-legislative discussions, so we should look not only at flexibility and time scales but probably at having additional members from time to time. That is something that we could suggest to the Procedures Committee. Last year, the Justice and Home Affairs Committee had horrendous problems because everything seemed to land at its door, which is why it has now been divided into two committees.

I sometimes think that the problem is more to do with the number of members than with the number of meetings. Suppose that Rhoda Grant and I had been stuck in Inverness and had not been able to get to today's meeting. Is there a mechanism whereby two substitutes from our parties could help out? I am trying to make constructive suggestions.

15:15

The Convener: I believe that the Procedures Committee is discussing substitutes.

Mrs Ewing: That is all that I wanted to say. I am just thinking off the top of my head, having read the paper.

The Convener: As I said, the issue of substitutes is being considered.

Mrs Ewing: What about additional members, if necessary?

The Convener: Given that, in the reorganisation of committees, this committee was left considerably larger than others, asking for yet more members may be pushing out the boat a little.

On the question of when committees meet, I think that meeting on Tuesdays and on Wednesday mornings, as set out in the paper, is the way ahead. The committee has, in exceptional circumstances, met on a Wednesday evening and on a Friday. We should continue to do that only in exceptional circumstances and when we feel that we can fit such meetings in. I certainly would not approve of any move to make that practice more common than it already is.

I have a fundamental problem with the prospect of having committee meetings during plenary meetings of the Parliament. You may remember that, when we met on a Wednesday evening, having arranged a 5.30 pm start, we ended up waiting until 6.45 pm because business in the Parliament was extended that night. That could become something of a bane to the committee's work.

Rhoda Grant: I do not have a problem with standing orders being changed to allow committees to meet when a plenary meeting is taking place, but that should happen only in exceptional circumstances. When we were considering the National Parks (Scotland) Bill at stage 2, few people outside the committee, apart from one or two with a local interest, wanted to come along.

Other committees have met in private, including the Education, Culture and Sport Committee. I know that because the lunch time meeting of my cross-party group on crofting was thrown out into a tiny little room. Because that committee could not meet during the plenary meeting, it had to meet at lunch time, so all the cross-party groups had to be moved out of the building. That was a private meeting to consider a draft report; the only people involved would have been members of the committee. There are circumstances in which that is acceptable, but I do not think that it is appropriate for normal meetings that other people may want to take part in.

The Convener: If a move were to be made in that direction, such meetings should take place only if standing orders have been specifically suspended for the purpose of each meeting.

Rhoda Grant: Possibly, but there is a reluctance to do that. Standing orders were suspended to allow the Education, Culture and Sport Committee to meet during a Parliament sitting day, as I recall. I do not think that it is a good idea to keep that as something that is almost untouchable.

Mrs Mary Mulligan (Linlithgow) (Lab): I would not be particularly happy about committees meeting while the Parliament is meeting. However, Rhoda Grant is right to say that there was an occasion on which standing orders had to be suspended so that a committee could meet during the lunch hour on a Thursday. That seems a little bureaucratic; the meeting was a one-off for a specific situation and, as Rhoda said, it was with reluctance that the standing orders were suspended even then. I think that we must accept that there will be odd occasions on which committees have particularly pressing business that needs to be dealt with. Although I would not want us to meet at the same time as the whole Parliament, I think that a little bit of flexibility could have helped.

I know that the cross-party crofting group was sent to another meeting room, but I think that it is appropriate that committees should be given priority for meeting rooms in the building. I know that there is always pressure on space, but if committees have to change their meeting times, priority should be given to committees rather than to cross-party groups.

Cathy Jamieson: I was involved in some of the discussions in the conveners group. I am particularly attracted to the notion of having short, focused meetings in addition to the regular scheduled meetings. There is a tendency for committee meetings to deal with an amount of work that takes up the whole afternoon—people feel that they have to justify meeting by having a huge agenda. I take a different view. If we have bits of business to discuss, it is better to keep that discussion short, sharp and to the point and to get it out of the way. I hope that all committees will consider that recommendation. If we are in a scheduled cycle of fortnightly meetings, we could meet to deal with statutory instruments and get them out of the way without feeling the need to fill the agenda.

Dr Murray: Like Cathy Jamieson, I am attracted to the idea that we should focus on a schedule of fortnightly meetings. We abandoned fortnightly meetings because of the National Parks (Scotland) Bill and we have had other legislation to consider since then. However, we should see

whether it is possible to encompass our business in fortnightly meetings rather than feeling that things always have to drag from week to week. Rather than having debates every week, we should see whether we can structure our business so that we can meet fortnightly again.

Margaret Ewing made some good points about the budgetary implications of committees going out en masse to other parts of Scotland. However, members of this committee have managed to do fact-finding work. Some members went to Braemar to see a grouse moor and a number of us met representatives of local salmon fishery boards to discuss the Salmon Conservation (Scotland) Bill. Such visits do not have to be large exercises; there are ways of consulting more widely in our own areas without necessarily putting a budgetary strain on the committees.

Alex Fergusson: My view of the document is that it is a very worthy wish list and a splendid aspiration. However, I have to say that I will believe it when I see it. Although I agree with Cathy Jamieson that we should be as focused as possible, the work that the committee has done has proved that we have to meet weekly. I cannot see what is going to happen to alter that. I hope that it alters, but I cannot see the document as anything other than a well-meaning wish list.

Richard Lochhead: I concur with much of what has been said, especially about fact-finding visits and going out and about. All committees should do more of that. The Parliament underspent by £20 million last year, so I do not think that budget constraints should be a factor.

I would have liked to see more in the paper about joint committees and how we can make more of committees working together.

The Convener: The paper does not cover that issue, although it has been spoken about at times.

Richard Lochhead: That is a missed opportunity. If two committees are interested in a subject, they should each allocate some members to carry out the investigation and report back. There must be some flexibility to allow that.

I would like to know how many statutory instruments come through this committee as compared with other committees. That may influence how we approach subordinate legislation and may influence our attitude to the suggestion that there should be short, sharp meetings to deal with SIs. What proportion of SIs going through the Parliament go through this committee? I suspect that it is a fair bulk.

The Convener: It would be interesting to have a breakdown of the number of SIs going through each committee. The clerk tells me that the figure is in the annual report.

Mr Rumbles: I support what Richard Lochhead and Elaine Murray have said. The fifth bullet point in paragraph 11 states:

“For committees meeting on a fortnightly programme, if necessary short, focussed meetings should be called to deal with subordinate legislation.”

That is the point that Richard was making. It is within the power of the convener and deputy convener to produce an agenda that allows us to hold fortnightly meetings and to schedule, as necessary, other short meetings to deal with subordinate legislation. That would be an appropriate course of action.

The Convener: That is certainly my aspiration, and we have come close to it on a couple of occasions. We can focus matters a bit more.

Alex Fergusson: One also has to bear in mind that exceptions should be made for the lead committees on bills.

The Convener: Indeed, as when we were the lead committee on the National Parks (Scotland) Bill.

I notice that paragraph 13 of the paper highlights the concern that certain committees should deal with matters at arm's length rather than getting into a position in which they could be described as being collusive with the Executive. I do not think that that accusation could ever be levelled at this committee.

Mr Rumbles: Certainly not.

The Convener: Richard Davies has taken notes of the committee's comments on the paper. I shall try to schedule the committee's business according to the suggestion in the paper. Although that may not be entirely possible at present, it remains an aspiration.

Alex Fergusson: As long as we are told what smart hotel you will be staying in for the conveners away day.

The Convener: I am not aware of that yet, but I shall pass the information on to committee members at the earliest opportunity.

We have agreed to take item 5 in private.

15:25

Meeting continued in private until 16:41.

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