

RURAL DEVELOPMENT COMMITTEE

Tuesday 17 September 2002
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE

20th Meeting 2002, Session 1

CONVENER

*Alex Fergusson (South of Scotland) (Con)

DEPUTY CONVENER

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

COMMITTEE MEMBERS

*Rhoda Grant (Highlands and Islands) (Lab)
*Richard Lochhead (North-East Scotland) (SNP)
*Mr Jamie McGrigor (Highlands and Islands) (Con)
Mr Alasdair Morrison (Western Isles) (Lab)
*John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Irene Oldfather (Cunninghame South) (Lab)
*Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
Elaine Smith (Coatbridge and Chryston) (Lab)
Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

George Lyon (Argyll and Bute) (LD)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
John Scott (Ayr) (Con)

*attended

WITNESSES

Ross Finnie (Minister for Environment and Rural Development)
David Ford (Scottish Executive Environment and Rural Affairs Department)

ACTING CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 1

Scottish Parliament

Rural Development Committee

Tuesday 17 September 2002

(Afternoon)

[THE CONVENER *opened the meeting at 14:03*]

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen, and welcome to this meeting of the Rural Development Committee. I ask—as I always do—everyone to ensure that their mobile phones are turned off.

We have received apologies from Irene Oldfather and Alasdair Morrison. I was advised that two other members were going to be late, but both have just arrived, so that is all right.

Item in Private

The Convener: Under agenda item 1, I invite members to agree to take item 5, on our arrangements for the consideration of the Agricultural Holdings (Scotland) Bill, in private. The matters that we must discuss involve the consideration of potential witnesses and timetables. We previously agreed that consideration of our forward work programme would be taken in private. Do members agree?

Members *indicated agreement.*

Subordinate Legislation

Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (Amendment) Order 2002

The Convener: Item 2 is the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) (Amendment) Order 2002—I wish that I had not started to read that out. Members have copies of the draft instrument, which is on the functions of the Meat and Livestock Commission as they relate to Scotland and levies raised in Scotland. We have previously considered similar matters in a different context, when we looked into the establishment of Quality Meat Scotland. Members will remember that we had a lot of discussion about that matter, on which we received a lot of evidence.

I welcome Ross Finnie, the Minister for Environment and Rural Development, and his officials, Simon Hodge and Paul Cackette. The other two officials who are present are here for a later agenda item. I thank the minister and his officials for attending.

Members should note that the Subordinate Legislation Committee has made no comments on the order. I invite the minister to make some opening remarks. Members will then, while we have the officials at the table, be free to ask questions on any points that require explanation. When members have asked for all the clarification that they want, we will, if required, move to a debate on the motion. We cannot involve officials in answering questions at that point, so members are urged to clarify any questions that they have at the earlier stage.

The Minister for Environment and Rural Development (Ross Finnie): As the convener has expertly described the order, I will not repeat the title, save to say that it is made under section 89 of the Scotland Act 1998. Section 89 allows provision to be made in relation to cross-border public authorities, as defined under section 88, in consequence of the act. The section allows arrangements to be tailor-made for allocating accountability and control between the United Kingdom Government and the Scottish Executive and between the UK Parliament and the Scottish Parliament.

The order amends schedule 16 of a previous Scotland Act 1998 section 89 order—statutory instrument 1999/1747. The schedule relates to the functions of the Meat and Livestock Commission, to which I will refer hereafter as the MLC. The committee will be aware of the importance of the sector and it will be aware of these matters as it

was involved in the drafting of legislation on Quality Meat Scotland, which was established in 1999.

Quality Meat Scotland was formed by the MLC, the National Farmers Union of Scotland and the Scottish Association of Meat Wholesalers. QMS derives its functions and a large part of its funding from the MLC. The MLC has the statutory responsibility to promote greater efficiency in the livestock industry in Great Britain. It collects general and promotional levies on slaughtered or exported cattle, sheep and pigs. The Scottish general levy is currently retained by the MLC. That is because the MLC retains responsibilities for functions such as collection of market information, research and product development, livestock improvement, training and health education.

The period since devolution and the formation of QMS has highlighted the need for a more distinctive and locally appropriate strategy for each part of the United Kingdom and, in particular, for new accountability arrangements between the MLC and Scottish ministers. The Executive undertook a consultation exercise in April to gauge industry views on strengthening the role of QMS. The consultation was based on four core proposals: first, that QMS should become responsible for all MLC functions in Scotland; secondly, that QMS should be given the autonomy to develop a strategy for Scotland focused on Scottish red meat development and promotional priorities; thirdly, that QMS should receive the full Scottish general and promotional levies to address Scottish priorities for red meat development and promotion; and, fourthly, that QMS should continue to invest in GB-level MLC services where that confers benefits on the Scottish industry.

Respondents to the consultation included all the key stakeholder groups. They indicated a high level of support for the proposals on the role and functions of QMS, transfer of the Scottish levy to QMS and the increased accountability to Scottish ministers. The MLC has also been consulted on the terms of the order as is required by section 89 of the Scotland Act 1998.

Respondents also expressed the view that continued links with the MLC were important in order to prevent duplication of effort, ensure the retention of valued services, protect core expertise, maintain the integrity of GB programmes and secure best value for the Scottish red meat sector.

As a consequence of devolution, the order makes provisions on the financial arrangements, control and accountability of the MLC. It will do that by transferring to Scottish ministers the function of giving general directions to the MLC in relation to the use of the Scottish levy. The Agriculture Act 1967 currently gives that function

jointly to agriculture ministers. That does not change the arrangements for the setting of Scottish levy rates or the collection of the levy. The order will not affect the MLC's status as a GB body. It will require that the function of giving directions in relation to the use of the levy for England and Wales will cease to be exercisable by Scottish ministers.

For Scottish ministers to exercise the function of general direction over use of the Scottish levy, the levy must be defined. To do that, the order will require the Secretary of State for Environment, Food and Rural Affairs, Scottish ministers and the National Assembly for Wales minister with responsibility for agriculture and rural development, acting jointly, to make a determination to define the basis for the share of levy income.

The order will require the MLC to prepare for Scottish ministers an annual report on the discharge of its functions in Scotland. That will play an important part in strengthening accountability to Scottish ministers.

The delegation of functions in Scotland from the MLC to QMS will be achieved—after the order has been made—through a joint ministerial direction under the provisions of the Agriculture Act 1967. Delegated functions will include the preparation of an annual report for Scotland, which will be submitted to the Parliament. I hope that the Rural Development Committee will agree to the terms of the order.

The Convener: Thank you very much, minister. I will invite members to ask questions, but I would like to ask a question first. You mentioned that QMS is still free to invest in the MLC services that it feels are important to its work. Will requests for such action need to be ratified by you, or is QMS free to decide to take such action within its budgetary constraints?

Ross Finnie: I do not intend to run QMS. If QMS decides that research or investigations into the quality of meat or aspects of other services that have been provided in the past would be of benefit to its clear objectives of promoting the Scottish red meat sector, it will be free to invest in those services as it requires.

Rhoda Grant (Highlands and Islands) (Lab): How will the board of QMS be accountable to people who are not members of the organisations that are represented on the board, such as the National Farmers Union of Scotland? How will such people feed into QMS and how will QMS be accountable to them? We are discussing the Scottish levy, which relates to all farm produce.

Ross Finnie: The Scottish levy comes from all livestock produce. It is important to note that there is a slight lacuna at the moment, in the sense that

because QMS has assumed some of the functions of the MLC, it is not, strictly speaking, accountable to Scottish ministers. Therefore, a radical transformation of accountability will be one of the key changes that will arise from the order and from the subsequent directions. That is an important change, because it will mean that, in relation to strategy and general direction, there will be a link back to Scottish ministers.

On day-to-day functioning, the difficulty remains that QMS has been established as a company limited by guarantee and is therefore accountable to its members. The constituent body is still perhaps rather narrowly defined, but there is a vast preponderance of members who are meat wholesalers or who produce pigmeat, sheepmeat or beef—there are not huge numbers of people who are not directly represented by the body. At least there will be a loop round to the Parliament and Scottish ministers, which was not there previously.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): There is an obvious question to ask about the order, which states in article 6:

“The Secretary of State, the National Assembly for Wales and the Scottish Ministers, acting jointly, may from time to time make a determination of the Scottish levy.”

It is not specified what criteria will be used to determine the Scottish levy. What criteria will be used? Have those criteria been agreed with the Secretary of State for Environment, Food and Rural Affairs and the National Assembly for Wales?

Ross Finnie: There are two aspects to that. The levy arises according to where animals are slaughtered—that is the key element. The agreement that led to the formulation of the draft order arose from consultation with the key stakeholders, who indicated that they had no desire to have a differential levy between Scotland and England or between Scotland and Wales.

The approach must be to set the levy in consultation with the industry. After all, the industry bears the levy. The industry is looking for the outcome and asking what QMS can do for it. I am not trying to be over-simplistic, but I genuinely believe that ministers ought not to impose a levy that the industry is not seeking. We would have to consult the industry before we set any figure other than the levy that it has today.

14:15

Fergus Ewing: I understand the reasoning. Perhaps, once the consultation has been completed, we could be advised what conclusions have been reached and, in answer to my question, what criteria will be employed to determine the Scottish levy.

Ross Finnie: The criteria would be twofold. As with any business, QMS will need to be businesslike—as it is now and has been since it was formed a year ago—in the way in which it approaches its activities and it will have to draw up a plan of what it proposes to do for the forthcoming year. That plan is determined by the number of people that it can employ and the functions that it intends to carry out. It produces a budgeted head of expenditure, but does not necessarily produce all the relevant income.

It is for QMS to say what it wants to do and what it needs to do it, to which the industry might say, “Well, that’s all very interesting.” The first criterion must be the objectives and outcomes for QMS, but the second criterion is what the industry is prepared to bear.

Fergus Ewing: It sounds as though everything is up for grabs.

Ross Finnie: That has always been the way. The industry has always accepted that there are benefits. The proof of the pudding is in the service that QMS delivers. If the members of QMS—and the farmers individually—believe that the promotion, quality assurance, quality standard and marketing of Scottish red meat are of a high order, that is the evidence that they will need to agree to a levy.

The Convener: I fear that I was guilty of cutting Rhoda Grant off just as she got going. I am happy to let her back in.

Rhoda Grant: Would it be possible to review how stakeholders felt that the arrangements were working after, for example, a year? My concern is the same as the one that was raised in petition PE138, which is that QMS is not representative of all operators. There are also issues for those people—such as crofters—who feel that they do not have the input into QMS that they might wish to have. Is there any possibility of a review? How do you envisage the arrangements working? Would such producers be able to express their concerns to Scottish ministers, who could then change the direction of QMS if there was a problem?

Ross Finnie: Ministers would always have to be sensitive to any constituency of interest. Rhoda Grant mentioned crofters in particular. If they felt excluded from the process, or if anyone felt that QMS was approaching its task to promote the Scottish red meat industry on behalf of all of Scotland in a way that addressed itself only to certain sections of the community, Scottish ministers would have to act on the basis of the evidence.

However, I am reluctant to give the committee undertakings to review any bodies, given that the introduction of the order has necessitated a review

of the operation of QMS and its relationship with the MLC. QMS will now be responsible to the Scottish ministers on strategy and direction. That strategy and direction must be about how QMS responds to the red meat sector throughout Scotland, not in certain areas only. We have opportunities to address such concerns now that we have the direct link.

I did not hear the petitioner, but I think that some people were concerned that there was no access to QMS other than through membership. The only people to whom QMS was responsible, as a company limited by guarantee, were its members. If someone was not one of the members, they were excluded. The introduction of the strategic link to the Scottish ministers is important to me—as I am sure it is to the committee and the Parliament—for the accountability that it provides.

The Convener: If there are no further questions, I invite the minister to move motion S1M-3281.

Motion moved,

That the Rural Development Committee, in consideration of the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc.) (Amendment) Order 2002, recommends that the Order be approved.—[*Ross Finnie.*]

Motion agreed to.

Common Fisheries Policy

The Convener: We will move straight to agenda item 3, which is on the reform of the common fisheries policy. The committee is taking evidence on the European Commission's proposals for reform of the common fisheries policy. The main proposals are contained in a number of documents issued by the Commission in May.

Last week, we heard evidence from the Commission and from several bodies that have an interest in the Scottish fishing industry. This week, we are taking evidence on the proposals from the Minister for Environment and Rural Development, Ross Finnie.

We understand that the package of reforms will be discussed at the agriculture and fisheries council next week, with further substantive debates to come in October and November. We hope that the recommendations that we produce will be considered by the various bodies involved in negotiations on the proposals over the coming months.

I once again welcome Ross Finnie and I welcome his officials, David Ford and Ian Ferguson. We have received a briefing from the minister and a summary of the responses that his department received to its consultation on the proposals. I invite the minister to make some opening remarks before we proceed to questions.

Ross Finnie: I will be brief. It is widely acknowledged, even by the Commission, that many aspects of the common fisheries policy have not worked as well as they might have. The current review is an opportunity to reform the CFP for the better and to make it work for the long-term sustainable development of our fishing communities. We are all keenly aware of the growing threat to stocks. Members of the committee will be acutely aware of the real importance of fishing to Scotland's fishing communities. That makes this opportunity all the more important.

I am committed to promoting and preserving Scottish interests and priorities at each stage of the negotiations. The convener mentioned the agriculture and fisheries council to be held in September. The issue will run through the councils held throughout the year and I will attend those to ensure that Scottish priorities are fully reflected in the wider UK position.

The negotiating process will be long and difficult. Even at the most recent council meeting, it was apparent that there are significant differences of opinion between the member states—there are real differences between the northern and southern member states. However, I believe that we can secure a deal that is in the best interests of our industry.

On process, the Executive has just finished a wide-ranging consultation exercise, which involved written consultation and public meetings. We are pulling together the results of that and will consider them along with the views of other fisheries departments in the UK.

The next phase will be the second general discussion on 24 September at the agriculture and fisheries council. As I said, I do not think that any decisions will be taken until much later. The process of dialogue with Scottish stakeholders, the Rural Development Committee and the Parliament will continue as the process develops. We await the more detailed proposals to emerge from the council as we move away from the original road-map proposals to a more definitive wording. I know that, in the debate in Parliament, members pointed to the looseness of some of the wording. It is important that we get more definitive legislative proposals from the Commission.

That is the current situation. I would be happy to expand on any points. Progress has been much slower than we had hoped. I suspect that the presidency will have to try to bring some shape and direction to the process if we are to make real progress in the next few months.

Richard Lochhead (North-East Scotland) (SNP): Most people would agree with the minister that the review offers an opportunity for everyone to move on from the failures of the CFP. An essential priority has to be building trust between the fishing industry and the European Commission and politicians, which can partly be achieved by ensuring that science always prevails over politics.

I invite the minister to turn his attention to the European Commission's recent betrayal on deepwater stocks and the Scottish Executive's failure to persuade the Commission to support the science in setting total allowable catches for those fragile stocks. Five of the 30 skippers who are involved in that fishery approached me. They have been encouraged by the Government in recent years to invest in the deepwater fishery, only to find that a deal has been struck that denies them their livelihoods and hands stocks off Scotland's shores to the French, Irish and other foreign fleets. Does the minister agree that building trust between the fishermen and the European Commission and politicians will now be more difficult because of that? How will he advance the issue at the fisheries council later this month? The fishermen are disillusioned. Their faith must be restored in the decision-making process and the science.

Ross Finnie: We have discussed the points that Richard Lochhead makes before. I am not sure that we simply failed to persuade the Commission. The Commission took a stance that I do not support and will not support. I will return later to

the action that we are trying to take. More important in this context are the other member states, which, by 14 to one, decided that it was in their interests to support the Commission's proposal. That was extremely disappointing because of the fact that, as Richard Lochhead pointed out, the science did not underpin the proposal and because of the consequences for a number of stocks. One or two of the member states that sided with the proposal did so out of self-interest.

There are two issues for the future. I had a meeting with the Scottish Fishermen's Federation in Aberdeen during the recess, at which the sole topic of conversation was the outcome on deepwater fisheries. I undertook then, as I had done previously, to continue in tandem with the United Kingdom Government—it is important that we get as much weight as possible behind our argument—to make representations to the Commission on the way in which it handled the matter. I also undertook to continue to make it clear to the Commission that we do not regard the way in which deals were struck to be at all appropriate. I will make it clear in my communications with the Commission that, as the first or second biggest fishing state in Europe—depending on how that is measured—we do not expect to be treated in that way.

We are still discussing the technicalities of how to pursue the matter in the fisheries council. I have an open mind on that. There are two issues. There is a political argument to be had with the other member states and there is a desperate need to rebuild confidence in the operation of the Commission. I am not sure—although my mind is not closed—that losing another vote by 14 to one is the best way of pursuing the issue. There is a difficult balance to be struck.

Be in no doubt that we continue to make representations to the Commission on the way in which it has handled the matter. However, we need to be on board so that when we discuss CFP reform the points that we make are acknowledged. We should not get into a tit-for-tat open debate in the fisheries council, because that would not necessarily be the best way in which to proceed. I will take further advice on the matter before I attend the fisheries council in September.

I emphasise that we have made absolutely clear to the Commission our position and our real displeasure at what was a wholly illogical decision. Elements in the proposals are not necessarily scientifically based but questions of management. The proposals that emerge need crucially to be underpinned by science. It is important that the Commission realises that that is the only basis on which we can proceed.

14:30

Richard Lochhead: The industry is expecting the fight to continue, so we will, no doubt, return to the subject at question time on Thursday.

Ross Finnie: From the meeting that I had with the SFF, it was clear that the federation would wish to reopen the discussions. There are difficult constitutional issues of procedure in relation to how we could do that, given the way in which the decision was approved. The narrow issue that was referred to the Parliament was not all that helpful in relation to overturning the decision, because it concerned only a narrow part of what was decided. We continue to take advice on that.

Richard Lochhead: I turn to the proposals for the CFP that are contained in the draft regulation that the Commission has produced. It is clear that the Scottish industry is looking for a decentralised CFP that puts fishermen at the heart of the decision-making process and which protects Scotland's historic fishing rights.

The founding principle of the CFP is relative stability. Does the minister share my concern—and the concern of MSPs of all parties—about the question mark that has been put over the future of relative stability, both by the road map that the Commission has produced and, even more worryingly, by the draft regulation?

The draft regulation states:

“the Commission considers that progress towards more normal economic conditions in the fisheries sector would permit a revision of these arrangements in the longer term.”

The “arrangements” are relative stability.

Does the minister agree that one way to put minds at rest and guarantee Scotland's historic fishing rights—given that we are, as he has indicated, the number 1 fishing nation in Europe—would be to enshrine in the final regulation the founding principle of relative stability, so that it is there in black and white and there is no doubt that the rights will be protected for the future?

Ross Finnie: I have made my position absolutely clear. Relative stability is one of the key issues for us and there can be no doubt about that. As far as the Executive is concerned—and this has the full support of colleagues down south—relative stability has to be maintained. We have no interest in or intention of relinquishing that position. As far as I am concerned, relative stability is simply not a negotiable point, because it underpins how we operate. In allocating access to waters, it is absolutely crucial to the Scottish industry.

Richard Lochhead: At the CFP negotiations, will the minister move that the principle that he outlined in his remarks be enshrined in the text of the regulation?

Ross Finnie: I have just said that we are not going to give the principle up. If it is not in the text, we will move that it be included in the text. If it is in the text, we will support its retention. I will have to wait to read exactly what the text says, but be in no doubt—if it is not in the text, I will put it in the text; if it is in the text, I will support it; and if it is conditional, I will remove such conditionality as is required. I want an unconditional commitment to relative stability to be in the final text.

The Convener: Thank you for that clear answer.

Mr Jamie McGrigor (Highlands and Islands) (Con): It is no secret that most of the Scottish fishing industry thinks that there ought to be a reduction in industrial fishing in European Union waters. Is that likely to come about? There is a feeling that the reduction in fishing outside the 12-mile limit might result in an increase in fishing effort in coastal waters, especially off the west coast. Will the minister give artisanal fishermen advice on that?

On the situation to which Richard Lochhead referred, regarding deepwater species, the about-turn by the Commission and Herr Fischler resulted, as the minister said, in a 14-to-one defeat. Will the minister assure us that we will not have 14-to-one defeats on relative stability, the retention of the Shetland box and the 6-mile and 12-mile limits?

Ross Finnie: I shall answer those questions in reverse order.

As I understand it, there is no question but that the Commission's proposals for retention of the 6-mile and 12-mile limits have broad support from the member states.

Relative stability is the crucial issue. One or two states might want to tinker about with that, which puts them in difficulty because they cannot do that without being obviously partisan. For other member states, relative stability is important. The argument is very up front and I do not think that there would be a 14-to-one position on relative stability or on the Shetland box. We have done exactly what we were asked to do about the Shetland box, which is to submit to the Commission evidence in support of its retention.

The first part of the question was about industrial fishing and displacement. That is not so much a matter for the regulations; it is the outcome. We can enshrine the principle of relative stability—there are suggestions in our paper about having multi-annual settlements—but whether to displace or not will depend on the system that is used, for example total allowable catches or effort control. With the current pressure on stocks, it will be important to recognise that we would run the risk of dampening down effort and only fishing inshore. When we negotiate those points, we will have to

be careful not to trigger displacement.

Rhoda Grant: Last week, the committee spoke about how to eradicate bycatches and discards, and we discussed technical measures. How hopeful is it that the rest of the EU will take on the technical measures that Scotland already has in place?

In your paper, you mention that you have been considering trial bans to stop discards. How feasible is it to seek nil discards?

Ross Finnie: Gosh, I wish it were possible. It would make a huge difference.

On the adoption of technical measures, irrespective of the forthcoming CFP reform, if any member state has looked critically at the scientific evidence accumulated over the past few years and does not understand the enormity of the problem that we are facing and the need to take technical measures that will enhance the opportunity for young fish to survive, we are in a sticky position altogether.

I cannot guarantee that what Rhoda Grant asks will happen. No one should be coming to the discussions without recognising that technical measures are essential for the future. We anxiously await next month's International Council for the Exploration of the Seas figures. However, if any member state is misreading the continuing decline in biomass and the aggregate continuation in the general sense of effort, and does not realise that we are on a collision course with disaster, we are in serious difficulties.

On trying to eliminate discards, there is evidence of a correlation between the amount of effort that is expended and the TAC that one is trying to catch. The Commission is toying with getting those into kilter. Getting a better co-relationship between the amount of effort needed and the TAC could result in a reduction of discards. Because of the work that has been done, we await anxiously and with considerable interest the Commission's action plan on discards. It will have a serious bearing on how we preserve and conserve stocks.

Rhoda Grant: One of the other issues that we discussed last week was consideration of a points system for discards of over-quota fish. I am thinking of a mixed fishery, in which the quota of cod has been caught but not the quota of haddock. We discussed a points system under which fishermen could land marketable cod, in which the cod gained higher points than the haddock. In order to sell the cod, points would be lost from the haddock quota—I am not sure if I am explaining the system properly.

Such a system would mean that anything that was over quota would not be discarded; it could be marketed, although the fishermen would pay a

penalty for doing so, because it would cost them more of their overall quota.

Ross Finnie: We await those proposals. A number of ideas have been proposed to allow for flexibility, another of which is quota supplement. It would allow fishermen to land over-quota fish, which are then docked off. As with all of these things, there is an attempt to do two things: to get a grip on the high level of discards, recognising that it is difficult to put in place enforceable measures that do not make life a nightmare for those on the high seas who are trying to get a catch aboard; and to meet the requirements of the industry.

We have to examine seriously a number of permutations. Everyone is agreed—or appears to be agreed—that discards are a major issue. I have an open mind on the subject. We, too, have looked at the sort of measures to which Rhoda Grant referred. We are interested to see whether we can come up with something that would be practical, pragmatic, and not difficult to enforce on the high seas—something that would make a real difference. If we could get such measures together, we would be supportive of them.

Rhoda Grant: All the emphasis appears to be on reducing effort. One of my concerns is that all the finance that goes into fisheries will go into reducing effort and little finance will be available for the social and economic aspects of the communities that might suffer as a result of the reduced effort. What will be the balance between taking out effort and addressing the problems that communities face when that happens?

Ross Finnie: As Rhoda Grant rightly says, that is not at all clear from the Commission's proposals. Whenever I have a discussion about the prospect of the Commission presenting proposals on effort, I ensure that my officials include people who have the capacity to gauge the impact on the fishing and fish processing sectors and the socioeconomic impact on local communities. We do not have an answer to that question, but the department would consider the potential downside on your behalf, if such a situation were to arise. I am conscious of the issue and have asked for work to begin to at least consider where the impact would be. Once something starts to go downstream, it can travel quite far.

A proper examination of the issues would allow us to have solid information on which to argue the case for the allocation of European support measures with the European Commission if that is the road that it eventually goes down, as it appears to be doing.

Fergus Ewing: I want to return to the principle of relative stability. Last week, we had the benefit

of hearing evidence from John Farnell of the European Commission. He appeared to have what I would term to be a Jekyll-and-Hyde approach to the principle of relative stability.

The Dr Jekyll persona acknowledged that relative stability will apply and that TAC allocations will be made in accordance with it, but the Mr Hyde personality came out towards the end, when Mr Farnell asserted, as is stated in the road map, that the common fisheries policy is abnormal and is a distortion of competition policy. I put it to you that it is wrong, for many reasons, to view the fishing industry as just another industry. Not the least of those reasons is the fact that fishermen daily put their lives at risk, whereas those who are occupied in the making of widgets do not. Mr Farnell's view that the CFP is a distortion of the market is a fundamental misconception. Unless the Commission is willing to address that misconception, we will never be 100 per cent satisfied that Scotland's historic fishing rights will survive.

14:45

Ross Finnie: It is slightly regrettable, although perhaps inevitable, that the Jekyll-and-Hyde approach—as you kindly put it—which is also evident in the road map, means that the relative stability argument is much more firmly placed as a political argument. The Commission takes the rather purist attitude that we should start from the beginning with a plain sheet of paper. I find that difficult, because it is nonsense to say that we are starting from the beginning. We are where we are. The different member states that are engaged in the process have different interests, investments and communities. Given that stocks are declining, the notion that there is a level playing field and that all nations can compete in a free open market is far fetched.

The focus of the argument is on member states' political control. As I said in answer to Jamie McGrigor, if one considers the situation objectively, one finds that more countries than Scotland have a serious interest in relative stability. Therefore, one or two curious alignments might have to be made. There is no question but that the issue is a serious one for Scotland and, as far as I am concerned, it is non-negotiable.

Fergus Ewing: I welcome that. As was indicated in a plenary debate before the summer recess, there is unanimous support in the Parliament for relative stability and for the efforts that are being made to preserve it.

I want to mention a fairly serious, if technical criticism that I raised during that debate and last week with Mr Farnell and others. You have made it clear that you are prepared to go to the

barricades to protect the principle of relative stability. That is welcome. You said that if the proposals do not contain a provision to allocate TACs on the basis of relative stability, you will come out fighting, because that is not acceptable to you. The draft regulation that formed the basis of the debate that we had before the summer recess did not say that the TACs would be allocated on the basis of the relative stability principle, but said simply that regard should be had to the relative stability principle. That use of words by a civil servant somewhere means that the decision about who gets which fisheries will not be determined absolutely and by law by the principle of relative stability. There is scope for discretion.

I do not want to be alarmist, but it seems to me that that form of words is a Trojan horse. If it is not removed, it might in future allow someone to argue along the same lines as Mr Farnell and the road map, and say that the relative stability principle is a distortion and must be departed from, waived, modified, tweaked and—we fear—ultimately abandoned. Will you take on board that serious point?

Ross Finnie: Yes. When we discuss the final details, we will have an interesting debate on the meaning of the phrase “have regard to”. That ought to mean that we allocate TACs on the basis of relative stability and that we have regard to scientific advice and other factors. We do not want a loose preamble in that section—we want the wording to be absolutely clear and unambiguous. The Jekyll-and-Hyde answers—as Fergus Ewing put it—given by Mr Farnell in the days leading up to the debate reinforce my position.

Fergus Ewing: I will ask about two specific fisheries. My first question is on the west of Scotland fishery's nephrops quota. In your opening remarks, you underscored the need for the new CFP to reflect Scottish priorities. Fishermen on the west coast feel that Scottish priorities have not been reflected over the past two years because there was no scientific basis for the 10 per cent reduction in the nephrops quota for the west of Scotland fishery, and there was no significant bycatch. I understand that you accept that there was no scientific basis for that reduction. How can the west coast nephrops fishermen have confidence that the system that has let them down in the past will be replaced by a better system in the immediate future—that is, in the year ahead?

Ross Finnie: In response to a parliamentary question last week, I made it clear that we are continuing to press for the restoration of the 10 per cent that was cut from the TACs for both the North sea fishery and the west coast fishery.

On the matter of fishermen's confidence in the system, the proof of the pudding will be in the

proposals that are made this year. Last year, a cut was made that was definitely and wholly unsubstantiated and that was based on the Commission's assumption—unsupported by evidence—about the mixed fishery and nephrops. We put the evidence to the Commission and, at the end of the day, we won the argument, more or less. I suppose that the crucial issue this year is the way in which the Commission allocates the nephrops catch.

The west coast fishermen and I might have a great deal more faith in the system if the Commission were to do that on the basis of the evidence that we have submitted, so that no erroneous assumption is made about the mixed fishery catch. However, we have no evidence that the Commission adhered to the evidence that we put to it last year, so I await the outcome this year with considerable interest. It would do the Commission untold damage if it were to depart from the evidence that we have submitted.

Fergus Ewing: My second question is on fisheries policy, in its widest sense, and the plight—the impending crisis—that faces scallop fishermen in Scotland. Some scallop fishermen have predicted that they will have no future if the method of testing for amnesic shellfish poisoning that has been proposed by an employee of the Food Standards Agency Scotland in Aberdeen is implemented next February.

My question should be seen in the context of the CFP, but it goes back to the point about taking an evidence-based approach and achieving an appropriate balance between the interests of public health and the interests of fishermen. We should apply limits that protect public health but which do not jeopardise the future of a traditional Scottish industry. The scallop fishermen feel that they have not had a fair crack of the whip in Parliament, as far as putting their case and getting their message across are concerned. Will the minister intervene in order to take a grip of the situation before the proposal becomes law and jeopardises an entire industry? I repeat that it seems to have come from one FSA official.

Ross Finnie: I am not sure whether only one official runs the FSA. I assume that, if the FSA issues an instruction, collective responsibility applies, and that such instructions come from the FSA as a whole. The difficulties that have arisen over that development are highly regrettable because the industry was the first to moot three-tier testing, as Fergus Ewing will recall. It was only when that proposal transmogrified into a European view and came back to Scotland that we started to get into real difficulties about how we could test the adductor for ASP.

Although I am concerned about the regulation, members should recognise that I am able to make

representations to the FSA and others only on the ground of perceived unfairness. It is inappropriate for a fisheries minister to tell the FSA how to protect public health; it is proper for me to draw to the Minister for Health and Community Care's attention any suspicions that the measures are not being applied fairly. Before the Scottish Parliament was created, agriculture and fisheries ministers also had a hand on the other side of the fence and dealt with public health. The current division is correct: we do not attempt to get on the other side of the fence.

I am not trying to dodge the issue: I simply do not think that I should be telling the FSA that all Scotland's fish are perfectly healthy and that it should not say otherwise. That is the wrong approach. Instead, the Minister for Health and Community Care and the appropriate committee should be questioning the fairness of the situation. As I have said, although it is perfectly reasonable for me to make the same points, it is not up to me to say that the FSA is wrong in this case. I hope that you understand that important distinction.

Fergus Ewing: I see the distinction. However, do you believe that the tighter regulations that are being introduced—apparently at the EU's behest, although the same regulations do not apply outside the EU—are necessary? The industry feels that the existing regulations have been successful. Since they were introduced in 1999 and scallop blocks were closed to protect public health, there have been no incidences of ASP.

Ross Finnie: That is a fact. I have already expressed my surprise that, given the level set by other international authorities, the threshold for testing has been set as low as it has been. However, I could get into dangerous waters—if I can use that pun—if I made a judgment about whether that is in the interests of public health. Health ministers and the FSA should have that debate.

Fergus Ewing: Just to finish on this point, convener—

The Convener: Please do so, because we are debating the CFP, not this matter.

Fergus Ewing: I agree. However, the CFP must be evidence-based, and I can find no evidence to justify the approach that has been taken. Indeed, the minister seems to have some sympathy with that point of view.

I was about to say that I hope that the committee will return to the issue and perhaps conduct an inquiry, to find out for itself exactly why the FSA thinks that the regulations are necessary and, indeed, to ask the fishermen what could or should be done to protect their vital industry. Perhaps we could consider that proposal as an agenda item for the next meeting.

The Convener: We can consider that suggestion later, if we have time.

Richard Lochhead: Before we leave the issue of scallops, I should point out that even if the minister wore his European development hat he would see that the fishing industry—and no other—sustains many jobs in some parts of rural Scotland. That is perhaps why he should intervene.

Ross Finnie: Now, come on—

The Convener: I will give the minister a chance to answer that point.

Ross Finnie: Richard Lochhead made a rather cheap remark. I have made absolutely clear my concern about the matter. However, I do not think that it is right for a minister who has the responsibility to promote an industry to be blasé and say that the FSA is wrong. The agency should be asked the question directly, because it is responsible for protecting public health. As the Minister for Environment and Rural Development, it is not my job to second-guess anyone. It is only proper that I engage with the FSA. In fact, it would be deleterious to Scottish public health if food and fishing ministers started to decide what was healthy for the general public.

The Convener: Thank you. I ask Richard Lochhead to stick to the subject under debate.

Richard Lochhead: I want to turn to the Commission's proposals as contained in the regulation documents. There seems to be great consensus between the parliamentary committees and the Executive on many points. The proposals include the introduction of regional advisory councils, about which the Executive says:

"The measured views of such Councils should exert real influence on the decision making process."

Given the importance of decentralising the CFP in the current review, will the minister define "real influence"? How can it be achieved through the current proposals? Will we have to strengthen the proposals to give teeth to the new management committees?

15:00

Ross Finnie: The question addresses two distinct areas. The regulation must provide a clearer steer than it currently does that there is an obligation on the Commission to take account of what is said by fishermen, scientists and environmentalists on the regional advisory councils. It is not satisfactory to say simply, "I could pass this on to Richard Lochhead," who might say, "Thank you very much—that was interesting." There must be a two-way flow. If regional advisory councils are to be constituted, there must be an obligation on the Commission to

demonstrate whether that means it must make formal responses. The Commission must also provide reasons why RAC proposals are accepted or rejected. At least that would provide the basis of a discussion in the regional advisory councils. It would be a bit cumbersome, but it would put a moral pressure on the Commission to deal seriously with RACs. I hope it will not come to that; by having to respond, the Commission might do so properly and therefore avoid a later debate on the councils taking place.

Richard Lochhead: Do you envisage any delegation of powers from the Council of Ministers and the Commission to the RACs?

Ross Finnie: There might be possibilities for delegation. We have always maintained the Scottish position that we should make the regional advisory councils as effective as possible in dealing with their sectors. Some of the proposals are a bit woolly and I would like them to be fleshed out.

Richard Lochhead's first point was crucial. The idea is all right, but I have difficulty understanding where it will bite if the Commission can ignore what the councils say. That is hopeless and it will not encourage people to participate—participation being the first step. A framework should then be put in place to ensure that the councils are taken account of. One can consider more seriously what powers they might have to exercise.

Richard Lochhead: Given that this is the first opportunity in 20 years to change the CFP and to give our fishing industry a future, it is imperative that Scotland gets a result from the forthcoming negotiations—we cannot afford second best. Will the minister explain to the committee his tactics to get that result?

Last week, when we took evidence from the industry, Danny Couper from the Scottish Fish Merchants Federation said that

"It would probably be better if we had a Scottish minister directly representing the interests of fishermen in Europe".

Mike Parks said:

"I feel that the SFF is loading the correct bullets, but the Executive is not firing them hard enough."

Andrew Tait said that

"the minister should be taking the lead"

and Robert Stevenson said that

"the minister is not going in whole-heartedly".—[*Official Report, Rural Development Committee*, 10 September 2002; c 3402 and 3417.]

There is a great deal of concern that the Scottish Executive is not prepared to fight hard enough to save the Scottish fishing industry in its hour of need, which will be during the negotiations in the months ahead.

Is the minister prepared to ask to lead the UK delegation to the Council of Ministers, given the importance of the negotiations and the fact that the Scottish Executive has led previously in discussions about education and health matters? Surely, given the fact that two thirds of the UK fishing industry is in Scotland, there exists an ideal opportunity for the Scottish Executive and the Minister for Environment and Rural Development, with responsibility for fisheries, to stand up for the Scottish industry?

Ross Finnie: I am interested that critics of the Executive say that we are not batting hard enough for the CFP; given that we have not yet discussed the CFP at a Council meeting I am not sure what is the basis of that allegation. We have made it clear in recent times how hard we are batting for Scottish interests.

There will be elements of the CFP negotiations in which it will be important that the Scottish view predominate. I will not undertake to lead throughout all the CFP discussions, which could go on for four or five Council meetings. There are key elements that will be of particular concern. The whole negotiations will be of concern and I will not hesitate to lead where I think that that would be in the particular interests of Scotland.

Mr McGrigor: Other member states seem to give more funding for measures through the financial instrument for fisheries guidance than has the UK Government in the past. Would you follow the wishes of the Highland Council, which has asked for FIFG funding for small-scale fishing communities? Would you consider trying to increase the spread of measures for which funding can become available?

Ross Finnie: We must see the shape of what will be required as a result of the reform of the CFP and, linked with that, the outcome of this year's ICES advice. That will have a crucial bearing on the changes, if any, that will be made in the Scottish fishing sector. I am reluctant to commit to expenditure in a general way before knowing that. We will have to examine critically where such measures are required. We must also be clear about, and argue for, some of the changes in the current proposals, some of which are clearly in our interests and some of which are less so. We must reach the position where we renew vessels on safety grounds without making a general investment in the renewal of capacity, given that the general trend is towards effort reduction.

There are proposals for the FIFG in the regulation and we have specific needs. If we take the combination of the shape of the CFP and what comes from this year's ICES advice, we will be in a better position to know where and what support is required.

Mr McGrigor: Can you give us any idea of the time scale for setting up and putting in place the regional advisory councils?

Ross Finnie: Agreement for the CFP reform will be more critical than getting those councils in place. To be honest, I am not at all optimistic. It is far too important a measure to contemplate applying pressure and rushing the matter, because we could reach the wrong decision. It is an important negotiation and we are far from seeing the early shape of the agreement. I hope that by the end of the month, the next round at the agriculture and fisheries council will reveal a slight narrowing of the gap that was so evident last time round.

I can envisage discussion on agreement of the CFP reform going on into the early part of next year, despite the alleged year-end timetable. One of my colleagues might want to estimate how long it would take to set up the regional advisory councils if the final version of the CFP is agreed earlier in the year.

David Ford (Scottish Executive Environment and Rural Affairs Department): That is difficult to predicate, partly because it has not been agreed how the regional advisory councils would be set up. However, the initial proposal is that the Commission consider suggestions from member states. Therefore, it is up to member states, in a sense, to make proposals to an advisory council. It would take only a minimum of two member states to set up a council, which would put their proposals to the Council. One could envisage that, with the right will, the councils could be set up quickly, but it would be difficult to guess how quickly.

The Convener: Are you happy, Mr McGrigor?

Mr McGrigor: The only thing that I do not understand is the size of the regional advisory councils. If two member states are involved, does that mean that the area in question must be one that applies to two member states? If not, what does it mean?

David Ford: Again, the Commission's proposals have not pinned that down because they do not envisage the RACs being a one-size-fits-all solution. For example, a regional advisory council for the North sea would be far bigger and would include many more people than one for the Irish sea or another area of sea. However, it is correct to say that it should be an area of sea that includes the interests of at least two member states; otherwise it will almost become a private party.

The key issue is that the concept exists but the details are not agreed and will probably not be agreed in this kind of regulation. It might depend greatly on the needs of individual areas.

Mr McGrigor: You would need the United Kingdom and Ireland or the UK and Denmark to come to an agreement in principle.

David Ford: Exactly—or France. It would probably depend on who had fishing rights. For example, the Irish sea would include not only the UK and Ireland, but France and Belgium, who have fishing access and quotas in the Irish sea.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I am sure that, like many more people, the minister would accept that the reform of the CFP is to be appreciated and supported. I am sure that the industry would also support that view. However, the industry is saying to us—or to me at least—that the CFP is addressing the decline in stocks by trying to sustain and improve existing stock levels. That is why most of the legislation has been introduced.

People who are involved in the industry, however, suggest that the scientific and professional evidence that indicates that stocks have declined to a critical state is not, in fact, correct and that there is currently a buoyant and viable fishery.

Ross Finnie: I have difficulty in commenting on that. I would need to see what evidence of that was being brought by any fishery body. Essentially, we are dealing with advice that appears annually from the ICES. Our previous disagreement was that the Commission accepted only some of the ICES advice. Fergus Ewing, Richard Lochhead and I discussed how totally unacceptable that practice was.

If the fishermen say that the ICES evidence is incorrect, they would have to come forward with substantive evidence to support that contention. If that is the case, we are in real difficulties. There is an emerging consensus that the only way forward is to base our proposals on scientific evidence. Undermining that by anecdotal evidence will get us nowhere. It could be fatal for the industry if such claims were wrong.

John Farquhar Munro: To put it mildly, the decrease or decline in stocks was possibly overestimated.

15:15

Ross Finnie: I am in difficulty. I hear what John Farquhar Munro is saying, but the ICES is due to present its next set of figures in the middle of next month, and those who take that view will have to produce evidence if they feel that the figures are misleading, wrong or not well-founded.

The Convener: I have a question about the scientific evidence and your negotiating position. I notice that one or two of the submissions to the Scottish Executive mention a desire for an eco-

based management framework. Could you guide us as to what extent the perceived need for such an approach to fisheries management would colour your position over the next few months?

Ross Finnie: Not only did we receive evidence, but that evidence supported one of the views that was put forward by the Commission. The Commission proposed that, among other things, consideration should be given to moving towards an eco-based approach. To go back to what I said to John Farquhar Munro, we would need evidence.

In theory, one can see the attractions of an eco-based approach but, at the moment, we are all having some difficulty. There are those who measure the biomass and the general effort that is sustained by our fisheries across Europe. We are having greater difficulty measuring the impact of some of the conservation measures. Perhaps David Ford has a comment—the issue is mentioned in the proposals.

David Ford: The Commission has set out its major thinking in the action plan for environmental integration. One of its key comments is that it is almost infinite science to know everything about the ecosystem. However, a need to do more science is not necessarily a barrier to taking a precautionary approach. There is enough evidence to allow us to do certain things and to take an effectively precautionary approach.

The Convener: As I have already asked a question, perhaps I could ask another while I have the floor.

Last week, certain reservations were expressed about ITQs. It became clear that there were two definitions of ITQ: individual transferable quotas and international transferable quotas. There was a feeling in some quarters that we are inevitably heading in that direction and that there might be a danger that we will end up with a whitefish fleet that is similar to the pelagic fleet in that all the fishing opportunities are exercised by relatively few individuals and boats. What are your views on ITQs as defined both ways?

Ross Finnie: To be honest, the danger staring us in the face is that any quota that starts to become tradable is a real threat at a moment of economic weakness because people see an opportunity to opt out. I need to refresh my memory as to whether there are any proposals to restrict trading and where we stand on that. I would regard it as highly undesirable but, if that breaches the free trade principle, we could be in some difficulty.

David Ford: There are no proposals for individual transferable quotas. We can do quota swaps only on a national basis, which is the time-honoured system.

Ross Finnie: The convener was really talking about cross-border trading, in which a one would be able to fish because one has the quota, but the quota is not being landed and there is no intention of landing it other than at the designated home port. That has a serious implication for downstream activity.

Fergus Ewing: The written briefing that was provided by the Executive sets out the Commission's proposals. Proposal 20, which refers to aquaculture, says:

"the Commission's aims are to supply a healthy product in an environmentally sound way while creating employment in fishing dependant areas."

I hope that all members would support that as a general aim, particularly those of us who represent constituents in the west Highlands where salmon farming is imperative to the livelihoods of communities. Salmon farming contributes 40 per cent, if not more, of Scotland's total food exports every year and provides jobs where no others are available.

The salmon farming industry in Scotland seems to face a tariff that no other EU salmon farming industry faces, namely the payment of rent to the Crown Estate Commission for the sea bed. It occurs to me that, under EU competition rules, that must be an illegal tariff, because other countries, such as Ireland, where there is no crown estate commission, do not face it. The industry gets virtually nothing back for the millions of pounds that it ploughs into the Crown Estate Commission.

Does the minister think that there is an opportunity to lead the UK delegation in arguing that the CFP reform should include measures to outlaw the extraction of that payment by the Crown Estate Commission? That would allow the reinvestment of those millions of pounds into communities in the west Highlands, where it could further improve environmental standards and create and secure more jobs?

Ross Finnie: I have no idea whether the European Commission is the competent authority to deal with legislation concerning the Crown Estate's commissioners. We are all pretty clear that the Crown Estate Commission's practice of charging rent below the high-water line has concerned us for some time and I would like it to cease. I will have to take advice on whether what Fergus Ewing suggests is the appropriate way of pursuing an aquaculture policy and whether we would want, in the middle of a European regulation, to devote four and a half pages to deconstituting another body. I think that there are other ways of addressing the point that Fergus Ewing makes, which is not new. I am not wholly persuaded.

The really important point is that this is the first time that aquaculture has been recognised as a crucial and integral part of the common fisheries policy. The proposals are a bit skeletal. During the summer recess, when I met leaders of the aquaculture industry, I encouraged them to participate in the process and I am sure that the committee would want to do the same. At the moment there are no regulations that the leaders of the industry would find offensive, but if aquaculture is to be part of the common fisheries policy, they ought to remain alive and alert to the fact that people might start producing regulations to beef up the current proposals. Given that we lead in many aspects of this area, it is important that we make a positive contribution to the policy.

The Convener: Thank you. We look forward to the Executive's aquaculture strategy, which will be published in the next few months.

I will round up by asking the minister simply—at least I hope that this is simple—how he views the proposals for multi-annual management plans. I ask that because it was put to us last week that that would involve a transfer of power from the Council of Ministers to the Commission. Does the minister welcome that and what are his wider thoughts on it?

Ross Finnie: I do not believe that there is a case for the Council's devolving its powers elsewhere. We would lose essential accountability through that. The aim of introducing more predictability and stability to the management plans is laudable, but I am not sure that the way of doing that is to give the Commission more powers. It seems to me that that would be an inappropriate devolution or delegation of power and I am not comfortable with that proposal.

The Convener: No other members have caught my eye, so I assume that they are happy. I thank the minister very much for his participative approach to the meeting. We will make our views known in due course. I am sure that he is looking forward to receiving a copy of our views.

Ross Finnie: I am.

Subordinate Legislation

Common Agricultural Policy (Wine) (Scotland) Regulations 2002 (SSI 2002/325)

The Convener: Agenda item 4 is consideration of two statutory instruments under the negative procedure. Members have the instruments in their papers.

The first instrument is the Common Agricultural Policy (Wine) (Scotland) Regulations 2002 (SSI 2002/325). The Subordinate Legislation Committee asked two questions of the Executive, which the Executive answered to that committee's satisfaction. One example of defective drafting was brought to the attention of the Rural Development Committee. Other than that, no comments were passed on and no member has noted a desire to speak on the instrument. I assume that the committee is content to make no comment on the instrument.

Members indicated agreement.

Conservation of Seals (Scotland) Order (SSI 2002/404)

The Convener: The second instrument is the Conservation of Seals (Scotland) Order (SSI 2002/404). Members will note that the Subordinate Legislation Committee had nothing to report on the order. I understand that the order has been brought about because of the incidence of distemper among the seal population, which is having a devastating effect thereon. The proposal is to prevent culling for one year in certain areas, because of the effect of distemper.

Is the committee content?

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Why does the order prohibit injury, killing or taking of common seals from 4 September? It is now 17 September.

The Convener: My assumption, although I will have to confirm this, is that that reflects the concern that exists about the decline in the seal stocks in those areas.

Mr Rumbles: How can we do this retrospectively?

The Convener: It would not be the first time that we have done that. Is that Richard Lochhead's point as well?

Richard Lochhead: Yes. What is the point of discussing the order?

Tracey Hawe (Clerk): I believe that the order has already come into force.

Mr Rumbles: Why did it come into force from 4 September?

The Convener: The Scottish Executive environment and rural affairs department has not complied with the 21-day rule.

Tracey Hawe: SEERAD has written to the Presiding Officer to explain the need to introduce the order urgently to provide additional protection for the seal population.

The Convener: Would not it have been incumbent on the Executive to supply the committee with a copy of that letter?

Tracey Hawe: The letter is in the committee papers.

The Convener: My apologies.

Mr Rumbles: Sorry, I did not catch that.

Tracey Hawe: The order came into force on 4 September. SEERAD has written to the Presiding Officer to explain the reasons for the urgency behind the order.

Mr Rumbles: The order was made on 2 September.

Tracey Hawe: It came into force on 4 September.

The Convener: My apologies. A letter to the Presiding Officer from SEERAD, dated 2 September, is in the committee papers. The letter explains the thinking behind the urgent introduction of the order. I will give members a minute to read it, then we will resume communication.

As I suggested, the letter states that SEERAD has taken this route as a measure of the urgency with which it considers, I presume on advice, that additional protection is needed. The letter explains:

"The current close season for common seals ended on 31 August".

I presume that SEERAD wished to introduce protective measures as soon as possible.

Mr Rumbles: My question is a real one. I am not prepared to go down the route of retrospective legislation. What happens to somebody who has committed an offence between 4 September and today? Parliament is only now making it illegal.

The Convener: We will come back to Mr Rumbles on that point.

Mr McGrigor: The restrictions cover common seals in the whole of Scotland and grey seals in the Moray firth. The order has been drafted in that way because it is perceived that an epidemic is coming. If there were no epidemic, would the restrictions be lifted automatically? What would happen?

The Convener: I notice that we do not have to deal with the order until 12 October. I ask Tracey

Hawe to explain the situation.

Tracey Hawe: As the order is subject to negative procedure, it comes into force automatically. Any member may lodge a motion to annul, which is a motion that nothing further be done under the instrument. If such a motion is agreed to, the instrument does not come into force.

15:30

The Convener: Although it has already come into force.

Tracey Hawe: The motion to annul will annul the instrument if it has already come into force, but in the absence of a motion to annul, under the negative procedure, the instrument is already in force as of 4 September.

Mr Rumbles: If it is already in force, why are we debating it?

Tracey Hawe: That is the way that negative procedure operates. The committee has the chance to scrutinise the instrument. The standard procedure is for the committee to make no recommendation on the instrument, in which case it remains in force in the absence of a motion to annul.

The Convener: Was there anything to stop the instrument coming before the committee before it came into force? There was: we were in recess.

Tracey Hawe: Precisely.

The Convener: We were not in recess on 3 September.

Mr Rumbles: Why was 4 September chosen as the date on which the order would come into force?

Tracey Hawe: That was the day after it was laid before the Parliament.

Mr Rumbles: Why was it laid before the Parliament on 3 September?

Tracey Hawe: To answer that is within the Executive's power. I am not aware of the answer.

Mr Rumbles: The order could easily have been laid before the Parliament later and we could have been approaching it differently. I am not content with what has gone on.

The Convener: We are duty bound to report on the instrument by 7 October, which means that we could come back to the instrument later. That gives us next week to come back to it, because the recess will get in the way thereafter.

Tracey Hawe: No, we have two weeks to come back to it.

Fergus Ewing: Mike Rumbles has raised a

significant point. Could we get some information before we finalise our view on the matter? I suggest that we seek clarification on whether the prohibition contained in the order would already constitute a criminal offence under the Conservation of Seals Act 1970. I assume that that would be the case—I think that Mike Rumbles assumed that—and it is likely to be so, but we could confirm that.

Secondly, could we invite the Executive to say what guidance it would offer to the Lord Advocate on whether anyone who breached the prohibition prior to having had notice of it and prior to the order undergoing parliamentary scrutiny should be prosecuted? We could also invite the Executive to agree that such persons should not be prosecuted if any such breach has occurred. That may be theoretical, and if any such breach has occurred it has perhaps not been detected, but the general principle is important. We should not allow that to pass, because the situation may arise again.

I will raise one or two other technical points, if that is in order.

The Convener: It is.

Fergus Ewing: The frontispiece says that the reason for the order is that it

"prohibits from 4/9/02 to 3/9/03"

various activities, but the order itself refers to the period of prohibition as two years, not one, and extending until 3 September 2004. That is in article 1. I presume that the correct figure is 2004, as stated in the order, not 2003, as stated in the frontispiece; I presume that that is a typographical error.

Assuming that that is the case, could we get an explanation of why the period is two years, not one? Would the season and cycle not be annual, rather than biennial? It would be helpful to get some justification of why that period is necessary.

Picking up the point that Jamie McGrigor made, the order differentiates between common seals and grey seals. It is okay for some seals but not others to be shot, according to the order. There does not seem to be any background argument or reasoning why that distinction is made, but I presume that it concerns technical reasons about the way in which the phocine distemper is spread. Presumably, the distinction is also linked to whether the size of the population is sustainable. Can we get more information on that when we ask the Executive for some background?

Mr McGrigor: I can provide some information. The population of common seals is about 30,000; the population of grey seals is about 130,000. Common seals are much more prone than grey seals to catching distemper. In the last epidemic, the number of common seals that died was much

higher than the number of grey seals. I imagine that the distinction is made because it is thought that the grey seals in the Moray firth have already got the distemper or that there have already been cases of it.

Richard Lochhead: The committee has raised several times the issue of how we are to scrutinise SSIs that are already in force. The only option available is for us to lodge a motion for annulment to take force retrospectively. Can we have an update on the response that we received to our previous complaints? Perhaps we could find out whether the Procedures Committee has any plans to look into the issue.

The Convener: That topic has certainly come in front of us before. If members are in agreement, we will write to the Executive about the issues concerned with the instrument and consider it as part of next week's agenda. Richard Lochhead mentioned the wider picture, but did we write to the Executive to ask for clarification on that before?

Richard Lochhead: I am sure that we took some action, yet here we are again. We should pursue the issue.

The Convener: I shall ask the clerks to look back, so that we can see where we are on that. We shall return to the issue next week.

Mr McGrigor: As it has now been made clear that the instrument will be in force for two years, what will happen if the epidemic does not break out? Will there be a procedure to have the prohibition automatically lifted? When will that happen?

The Convener: That was one of our original questions. We shall ask the Executive whether the order would automatically cease to apply if the disease came under control. Do members want to make any further points?

Did Rhoda Grant glean anything from her excursion from the room?

Rhoda Grant: I would have gleaned less if I had stayed.

The Convener: We shall return to the instrument next week. There are too many questions to let them go unanswered.

Members have agreed that we would take item 5 in private, so I ask that the public seats be cleared.

15:37

Meeting continued in private until 16:20.

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