

RURAL DEVELOPMENT COMMITTEE

Tuesday 4 March 2003
(*Afternoon*)

Session 1

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RURAL DEVELOPMENT COMMITTEE

9th Meeting 2003, 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

Nora Radcliffe (Gordon) (LD)
Mr John McAllion (Dundee East) (Lab)
Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Mrs Margaret Ewing (Moray) (SNP)

WITNESSES

Paul Cackette (Office of the Solicitor to the Scottish Executive)
Donald Carmichael (Scottish Executive Environment and Rural Affairs Department)
Ross Finnie (Minister for Environment and Rural Development)
David Henderson-Howat (Forestry Commission)
Jim Johnstone (Scottish Executive Environment and Rural Affairs Department)
Robin Weatherston (Scottish Executive Environment and Rural Affairs Department)
Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone

LOCATION

The Chamber

Scottish Parliament

Rural Development Committee

Tuesday 4 March 2003

(Afternoon)

[THE CONVENER *opened the meeting at 14:06*]

The Convener (Alex Fergusson): Good afternoon, ladies and gentlemen. We are starting less punctually than is normal, but we have some leeway between the first and second items on our agenda. I welcome members, witnesses and members of the public to this meeting of the Rural Development Committee. We have received no apologies—one or two members are not yet present, but I understand that they will arrive later.

Subordinate Legislation

SFGS Farmland Premium Scheme 2003 (draft)

The Convener: Item 1 on the agenda concerns an item of subordination legislation—the draft SFGS Farmland Premium Scheme 2003. The scheme replaces the 1997 farm woodland premium scheme. Copies of the instrument have been circulated to members. It is an affirmative instrument and the Parliament must approve it before it can be made.

The Subordinate Legislation Committee reported on the draft instrument in its 19th report of 2003 and made a number of comments. An extract from the report has been circulated to members. A motion in the name of Ross Finnie invites the committee to recommend to the Parliament that the instrument be approved. The Deputy Minister for Environment and Rural Development is here to move the motion. I welcome him and his officials.

Before we debate the motion, it is customary for us to take time to clarify any purely technical matters or to allow explanation of detail while the officials are at the table. Officials cannot participate in debate once the motion has been moved. I invite the Deputy Minister for Environment and Rural Development to introduce his officials and to make some opening remarks. When all the points that members raise have been clarified and explained, we will debate the motion.

The Deputy Minister for Environment and Rural Development (Allan Wilson): On my left is David Henderson-Howat, from the Forestry Commission, whom most members will know. On my right is Jim Johnstone from the Scottish

Executive. Immediately behind me is Sandra Sutherland from the office of the solicitor to the Scottish Executive. I hope that we will be able to answer any questions or deal with any queries on the draft SFGS Farmland Premium Scheme 2003.

I would like to put the scheme in a wider context. As the convener in particular will be aware, two forestry grant schemes have been in place in Britain since the late 1980s. They are the Forestry Commission's woodland grant scheme, which provided grants for planting trees and set environmental and silvicultural standards, and the farm woodland scheme. Since 1992, the agriculture departments have operated the farm woodland premium scheme, which provides for continuing annual payments to compensate for farming income that is forgone when planting on agricultural land takes place under the woodland grant scheme. The farm woodland premium scheme provides payments for 10 to 15 years, depending on the type of trees that are planted. Currently, the scheme supports more than 50,000 hectares in Scotland.

Following devolution, the launch of the Scottish forestry strategy provided an opportunity to review UK-wide forestry grants schemes and to focus more on Scottish needs. We established a steering group to undertake that review. The group included the main forestry, agricultural and environmental land-use bodies in Scotland—the Scottish Landowners Federation, the National Farmers Union of Scotland and others. The steering group held a public consultation and saw the results of an evaluation of the schemes, which was undertaken by independent consultants. From that, the group made recommendations to ministers, which we accepted and announced in June last year at the Royal Highland Show. The committee will recall—I think that members referred to it at that time—that I sent a copy of the steering group's report to the committee for information.

The key changes that were recommended by the steering group included: closer links with wider Executive policy priorities; scope being allowed for targeting in priorities; a more integrated approach; better community involvement; increased focus on management of existing woodland; consideration of relaxing farm woodland premium scheme area limits; and simplifying the payment categories.

The group saw no need to merge the farm woodland premium scheme and the woodland grant scheme, provided that they operated seamlessly from the applicant's perspective. To that end, the steering group recommended that the new woodland grant scheme should be renamed the Scottish forestry grants scheme and should include expansion, stewardship and restocking as key elements, and that the farm

woodland premium scheme should become the Scottish forestry grants scheme farmland premium.

Under the Forestry Act 1979, the forestry commissioners have power to operate the core Scottish forestry grants scheme and no provision is made for subordinate legislation. The detail of the core Scottish forestry grants scheme was announced in January, and the Scottish forestry grants scheme farmland premium is the focus of attention today.

The draft SFGS Farmland Premium Scheme 2003 retains substantial parts of the previous scheme, so it is hoped that from the industry's perspective, change will be kept to a minimum. We have updated some definitions and references to make them consistent with usage in Scotland and in the Executive. For example, land use definitions will be made consistent with those under the rural stewardship scheme and farm woodland premium scheme payment categories will be simplified from the previous seven to the proposed four.

I assure the committee that scheme area limits—especially the 40-hectare limit on unimproved land, which was a concern for some steering group members—will be kept under review in the coming year as we assess the impact on take-up of the changes to the core Scottish forestry grants scheme. We will increase individual limits under the scheme when to do so is sensible. Participants in the new scheme will have access to an independent statutory appeals process, which is the same process as is used for other departmental grant schemes.

As I said, applicants' proposals for the premium scheme must meet the environmental and silvicultural criteria of the core Scottish forestry grants scheme in order to become eligible for the premium scheme, which achieves its environmental benefits through that and through requirements on participants to maintain the woodland for double the period for which payments are provided—up to 30 years—while the trees mature.

Both schemes are co-financed by the European Commission and, under rural development regulation 1257/99, the changes to the schemes that arose from the review were put to the European Union and approved in detail by the committee on agricultural structures and rural development at its November meeting. The draft statutory instrument is consistent with the steering group's recommendations and with the detailed Scottish rural development plan, which has been approved in the European Union.

The scheme will continue to provide support for what we hope will be well-designed woodlands

that support farming and which provide environmental and economic benefits, as well as the wider public benefit, in what might otherwise be fragile rural areas. It is worth remembering that more than half of the woodland that is currently being supported is on formerly unimproved land, at an individual limit of 40 hectares per owner. The scheme remains a real alternative to continued agricultural production, especially where such production might be marginal or in remote areas.

I commend the draft scheme to the committee.

14:15

The Convener: Thank you for your introduction and for introducing your officials. I am afraid that my fading eyesight no longer allows me to read name-plates at such a distance, although I know Mr Henderson-Howat.

I repeat that we are having a clarification session before we have a debate on the subject. This is an opportunity for members to ask any technical questions that they might have.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Although I broadly welcome the scheme, I have a few points to raise with the minister. You said that, following the steering committee's recommendations, the new schemes were designed to achieve several purposes—for example, promotion of quality silvicultural practice—and closer links with the Executive's policy priorities. What precise differences are there between the new SFGS farmland premium scheme and its predecessor?

Allan Wilson: Although the previous scheme was simple to manage, it was—it is arguable—open to differing interpretations about the eligibility of different operations. We aim to target grant payments in order to achieve policy outcomes and to deliver value for money, which might not previously have been such a high priority. The scheme will also provide applicants with greater certainty about grant eligibility than they have had in the past.

All the grant applications will require careful thought and some might have to be priorities. However, that is the right approach given that public money is being used to create forest assets for the long-term future. That is the principal difference between the schemes to which I would draw attention. There are other differences in relation to new plantings and the reasons why the scheme might be changed. Part of the criticism is that the scheme is too complex, but the previous simpler approach did not define the output so well and it left greater scope for less value for money.

David Henderson-Howat might want to add to that.

David Henderson-Howat (Scottish Executive Environment and Rural Affairs Department): It is useful to distinguish between the element of the Scottish forestry grant scheme that flows from the old woodland grants scheme and the element that we are talking about now, which is the farmland premium. That flows from the old farmland and woodland premium scheme.

The farmland premium is similar to the old farmland woodland premium scheme, except that there are different land categories with different rates per hectare per year, which is a slight simplification. The minister has outlined the greater differences between the old woodland grant scheme and the Scottish forestry grant scheme.

Fergus Ewing: I am really trying to get at the precise differences. I do not think that I have quite got there, although the official said that there are slight differences between the new scheme and the farmland woodland premium scheme, which was, I understand, an environmental scheme.

We are all in favour of more value for money and of such schemes delivering improved environmental standards. However, it is not clear to me what are the precise differences between the two schemes and how those differences will ensure value for money and higher environmental standards.

Allan Wilson: David Henderson-Howat might want to come in on that, but I make the point that in order to qualify for the farmland premium, someone would first need to apply for the revised woodland grant scheme. That differs significantly from the previous situation and it is important in terms of value-for-money considerations.

On new planting, the scheme will lead to better designed and more productive woodland and will, perhaps, expand the area of native woodland beyond that which existed previously, creating a sort of riparian woodland. When I sent out the revised scheme, I understood that it would not come before the committee for consideration, but I expected some comments; I was surprised when there was none. This might be the opportunity that we did not have at that time to go into the matter in greater detail.

David Henderson-Howat: Perhaps I could explain the exact numbers. Under the old farmland premium scheme there were three rates of payment. If, for example, a farm was outside a less-favoured area, there was a payment of £300 per hectare per year for arable land or £260 per hectare per year for other improved land. Now, £300 per hectare per year is available regardless of whether land is or is not arable. Similarly, for disadvantaged areas the figures were £230 and £200, but all payments will now be £230. For

severely disadvantaged areas the payments were £160 and £140, but now the rate will be £160. There has been a move to single rates of payment and there is no longer any distinction between arable land and other improved land. The payment for unimproved land is the same as it was previously, at £60 per hectare per year.

Fergus Ewing: I suppose that one welcomes simplification; any scheme that is unduly complicated tends to be subject to criticism. However, I cannot see how increasing the rates—which is, no doubt, welcome to those who receive the grants—can achieve the objective of obtaining value for money. If, as you have just said, grant rates per hectare are going to go up in every case, I do not see how that squares with the minister's assurance that the new schemes will ensure value for money. Perhaps you could explain that.

David Henderson-Howat: I should have added that the farmland premiums are based on forgone income from agriculture and are also based upon independent studies. The farmland-premium element is based on the arithmetic that is carried out on farmland incomes. It was a slightly by-and-large approach.

Fergus Ewing: I understand that the aim of the scheme is to encourage diversification into forestry—encouragement is needed, otherwise that ain't gonna happen. However, with respect, I do not understand how you can maintain that you will achieve value for money while increasing grants.

Allan Wilson: As you know, there were arguments in support of increasing the grants further, but that would have reduced payments to those who are already in receipt of the premium which, in many instances, is given to people in remote and marginally farmed areas: crofting counties, for instance, might have seen their share of the premium being reduced consequentially. We felt that keeping the payments at the proposed level will give greater benefit to more prospective beneficiaries. That is an important consideration, and is one that we should not dismiss lightly in terms of Executive policy and where we target agricultural support.

David Henderson-Howat: I will make one other point. For historical reasons, there are two legislative bases for the schemes: the woodland grant scheme and the farmland premium scheme. However, in contrast to earlier reviews, both of those schemes were reviewed together. In the past, under Great Britain arrangements, there would be a review of the woodland grant scheme, two years later there would be a review of the farmland premium scheme and so on. The review that led to the Scottish forestry grant scheme looked at the totality of both schemes. I understand what Mr Ewing says about the

farmland premium scheme, but when one considers it in the totality of the Scottish forestry grant scheme package, all the points that the minister made about targeting come into play.

Allan Wilson: That is the critical point—we cannot consider the farmland premium scheme in isolation from the Scottish forestry grant scheme as a whole, which targets and distributes support better. To consider one scheme without considering the other—which we are unfortunately required to do in this process—gives a disjointed view. We must consider the farmland premium scheme in its wider context rather than in isolation.

The Convener: Fergus Ewing has indicated that he would like to move on, but I want to pursue the difference between the scheme and its predecessors. I notice that the objectives of the scheme are to provide not only economic and environmental benefits, but social benefit. I do not argue with that, but will not one of the effects be—to put the matter rather simply—urbanisation of the scheme because the more social benefit that will result from a plantation, the more likely it is to receive support under the scheme? The minister mentioned that, at present, 40 per cent of the scheme is used for unimproved land, but it is likely that that percentage will become smaller because of that added objective.

Allan Wilson: It would be inaccurate to describe that as “urbanisation of the scheme”. We want to ensure that we target and prioritise the available funds to achieve the greatest public and social benefits. It is clear that the vast majority of funds will continue to be targeted at the more marginal and remote rural areas, but creating social benefit through the judicious use of grant is an Executive objective. We must ensure that, where feasible and especially with the locational premiums, we use the money to provide maximum benefit. That cannot be described as urbanisation, but as better and more targeted use of available resources to achieve the best social and public benefits.

Jim Johnstone (Scottish Executive Environment and Rural Affairs Department): We must remember that the scheme is intended purely for the creation of woodlands on farms and crofting land.

The Convener: I do not question that, nor do I question the good intentions behind the objective of social benefit, but I am considering its possible effect. I do not think that the minister disagrees entirely that the effect might be to bring woodland that is planted under the scheme away from unimproved poorer land and on to better land. Is that a likely impact of the scheme?

Allan Wilson: I suspect that the convener might be talking about locational premiums. As with any grant scheme, a limited pot of funds is available

for the farmland premium scheme. Locational premiums provide an important means of giving extra support for forestry in areas in which we have identified a particular need, either for indicative forestry strategies that have been drawn up locally, or for other purposes. Rather than detract from existing priorities, those extra sums provide added incentive.

David Henderson-Howat: The locational premium that is targeted at central Scotland, for example, will undoubtedly help urban and peri-urban forestry initiatives in that part of Scotland. On the other hand, the locational premium that is targeted at Grampian will clearly help more rural parts of Scotland.

Fergus Ewing: I want to raise a matter that has caused controversy in my constituency, although there is no reason why the minister should have heard about it. I dare say that I will write to him about it when I receive more responses. A general question arises from the matter, so I will take this opportunity—probably the only one that will be left to me in this Parliament—to raise it in principle.

There has been some controversy in the Glencoe area of my constituency about afforested land which, I am told, benefits from the woodland grant. It has been alleged that there has been a mass slaughter of deer there, which I am investigating. I cannot say whether the story is true, and I await a response from the people on the other side of the argument. I raise the matter because there has been local publicity about it.

How can control of deer be made a condition of the new grant, or indeed, the previous schemes? How do ministers ensure that there can be a cull but no slaughter? If it is alleged that culling goes beyond what is required, what mechanisms does the Scottish Executive environment and rural affairs department use to ensure good practice?

14:30

Allan Wilson: I do not want to comment on specific incidents—the member would not expect me to—but I will consider his representations on that matter. I assure him that my officials will certainly investigate the allegations.

Mr Ewing's question is relevant—the deer management plan would be the most appropriate mechanism in such a hypothetical situation. Good deer management will be a condition of grants in any future woodland grant scheme. That is how I envisage the system working in such situations. That is, to a certain extent, a good example of the point that I made earlier about having a better system of grant management than that which existed previously. One can tie that system to outcomes such as proper deer management, as opposed to simply make payments for unspecified

management purposes that might or might not provide the outcomes or the benefits that were originally sought. That is one advantage of the new scheme over the previous scheme.

David Henderson-Howat: The deer management plans are developed according to the needs of particular areas. That is done in consultation with the Deer Commission for Scotland, so that there are agreed culls and so on.

Fergus Ewing: I was aware that that was broadly the approach, and it is obviously sensible. Is there any mechanism to check whether deer management is proportionate?

David Henderson-Howat: The purpose of developing a deer management plan is to have an agreed cull that is set in a context that is—to use Fergus Ewing's word—"proportionate" to what is necessary to protect the crop.

Fergus Ewing: I have a constituent who is extremely emotional and concerned about deer, which have a proud place in Scotland, especially in the Highlands. That constituent is a lifelong experienced shepherd and has been involved with, and is knowledgeable about, the Glencoe area. He has strongly held views about what would happen if a cull became a mass slaughter. What mechanism is there to ensure that proper management is not exceeded and that deer are not killed outwith season and wholly disproportionately? How can that be policed? Is it policed at all? Does anyone check it?

Allan Wilson: The Deer Commission for Scotland should check whether there is a basis for deer management such as that which the member describes, or such as that which has been described to the member.

Fergus Ewing: I am grateful for that. That information is useful for the case that I mentioned.

I will move on, if I may.

The Convener: Please do. No other member has caught my eye.

Fergus Ewing: I am quite happy to give way to other members. I do not wish to hog the floor, as it were.

Another aspect of silvicultural practice and woodland management that has been highly controversial of late is deer fencing. This seems like a good opportunity to raise that issue. For decades, deer fencing was used to keep deer out of forests and to protect trees and prevent them from being destroyed in their early stages. The deer fencing was previously marked in such a way as to draw attention to the existence of the fencing to prevent the possibility—or likelihood—of birds flying into it. It seems that that practice, which perhaps served us well for several decades, is

now being abandoned in many areas. Does the Executive have a clear policy on the matter? If so, can we hear what it is?

David Henderson-Howat: The Scottish forestry grants scheme makes reference to the Forestry Commission's guidance on deer fencing, which goes into the question in a lot of detail. As Mr Ewing pointed out, there is a bit of a dilemma. On the one hand, the fencing is obviously desirable to keep the deer out of the crop—the trees. On the other hand, fencing can cause problems, such as deaths of capercaillie and black grouse. The guidance note deals with the circumstances in which fencing is an appropriate tool to use to protect the crop. It also deals with situations in which fencing is not appropriate, because of concerns about blackgame and capercaillie, so that the question is one of managing the deer in such a way as to protect the crops. Where such marking is appropriate, we can contribute towards the cost of marking fences under the Scottish forestry grants scheme.

Allan Wilson: I suppose that there is a balance to be struck. I take Fergus Ewing's point that, historically, the fencing regime has been a success for the development of immature woodlands. However, in the period that I have been doing this job, several of Fergus Ewing's colleagues have been vociferous about the other side of the same coin, which is the devastation that deer fencing can reek among the indigenous capercaillie population and on black grouse and other low-flying species. His colleagues have been rightly concerned that previous fencing policies and strategies contributed towards the decline of those species.

Clearly, we have a commitment to the conservation of those indigenous species as well as to the protection of immature forests and woodlands. Striking the appropriate balance is important to us.

Fergus Ewing: If I may pursue that point, we all want to see the capercaillie survive as a species. Some time ago now, we received evidence, I think from the Scottish Gamekeepers Association, that gamekeepers do not feel that the measures that have been taken will succeed. I accept the minister's point about the argument that my colleagues have pursued, but we are all concerned to achieve the objective. What evidence is there that deer fences have caused the death of capercaillie?

David Henderson-Howat: The short answer is that scientific papers provide evidence that birds such as capercaillie have suffered death from flying into deer fences. That is not the only factor influencing the decline of those populations but, where the population is precarious, that factor could tip the balance. That is why the issue needs to be treated with such seriousness.

Allan Wilson: I do not know about Fergus Ewing's personal experience, but in addition to the empirical evidence that David Henderson-Howat has mentioned, I can certainly provide anecdotal evidence from my visits to areas that have fencing for deer. I have seen the physical evidence of birds that have perished on such fencing because the birds are unable to see the fencing when they are in flight.

As David Henderson-Howat says, that is not the only factor that contributes towards the decline of the black grouse, for instance. The decline of the heather moorland habitat is probably of much greater significance than deer fencing, but I accept the distinction that has been drawn. Deer fencing is a contributory factor, and, in areas in which a population is reaching perilously low levels for its continuation as a species—as in the case of the capercaillie, which is a species indigenous to Scotland—we must take on board the concerns of those, including colleagues, who make representations that deer-land fencing needs to take account of birds' needs as well as the land manager's needs.

Fergus Ewing: Could we have the benefit of copies of the scientific papers that David Henderson-Howat mentioned? The matter is one of great controversy, so it would be useful to see the source evidence. I agree that issues of habitat and predators are far more concrete and realistic threats to the future of birds that we wish to survive.

Allan Wilson: I am sure that we can share the information that we have with the committee. In fact, we would be pleased to do that. I know of no one in the conservation field who argues that deer fencing is the sole contributor to the decline of the bird populations that we have discussed. However, where it contributes at the margins, it is an important consideration in the wider conservation debate.

The Convener: I take that as an indication that you or somebody else will forward to us the papers that exist.

Allan Wilson: Certainly. We would be pleased to do so.

Rhoda Grant (Highlands and Islands) (Lab): I have a general question about forestry and direction. The scheme covers 10 or 15 years, depending on the species that is planted. What happens beyond that period, given that trees become more mature at that point? What support will be available for the social and recreational use of forests when the trees reach 10 or 15 years old? What support will be available to allow visitors—for example, walkers, cyclists and even school trips examining the forest environment—into the forest?

The support that we give to forestry is not very joined up. Tree planting is helped through different schemes, but the schemes that allow people to enjoy a forest and manage it in its mature years come from a different area. Is there a way that we can join those up? How can we pull them together to ensure that we get the maximum benefits?

Allan Wilson: New planting has a role to play, given the impact over the longer term. As I said in response to the convener, part of what we seek to do through the scheme is to improve the quality and setting of urban and post-industrial areas, such as my and Elaine Smith's constituencies, and to improve the diversity of the farmed and—in Rhoda Grant's region—crofting landscape. The change in the basis on which we support new planting is an example of the joined-up thinking that Rhoda Grant seeks, and aims to influence habitats and landscapes over the longer time that woodlands take to come to maturity.

In the short term, we have said that the premium will be reviewed within the first 12 months of its operation. It will be interesting for whoever is Deputy Minister for Environment and Rural Development to see how it has operated and what impact the new scheme has on the way in which funds are prioritised and directed compared with the old scheme.

Jim Johnstone: I should add that, although we pay for 10 or 15 years, the farmer is obliged to maintain the woodland for 20 or 30 years. Quite a long period of maintenance is involved.

Allan Wilson: As I said in my preamble, beyond the immediate period of payment, the land manager enters into a longer-term commitment to the objectives that have been set in the medium term.

14:45

Rhoda Grant: That is the period that I am most concerned about—when the funding runs out and investment is being sought to allow people, especially those close to urban areas, to use the areas for recreational purposes. That could mean quite a big investment, as it involves creating footpaths, visitor facilities and disabled access. I know that some local enterprise companies are happy to assist farmers with that, in the interests of business generation and pulling people into an area, but that route might not be open to them if they have applied to the scheme.

Are people pointed in the right direction and given guidance on how to go about making the forest accessible and maintain it once the payments under the scheme finish?

Allan Wilson: That is precisely one of the areas in which we have improved on the previous

scheme. Page 26 of the applicants booklet deals with woodland recreation, for which the new scheme offers significant scope. The purpose of the grant is to improve the social value of woods and forests by developing facilities for informal recreation in a way that is commensurate with likely demand. We set out the criteria within the scheme to encourage applications that would seek to extend pathways, provide better disabled access and give people more opportunity to go out and enjoy woodlands and forests in a way in which they have not been able to in the past, and to redirect resources in favour of those recreational users. In the past, public money has gone out of the door without the same level of scrutiny being applied to its ultimate use or public or social benefit.

The Convener: I have a question on payments. In the past few years, I have had occasion to write to the minister on behalf of several constituents throughout the South of Scotland to bring to his attention payments through the scheme that were anything up to four months late. Can you give an assurance that the situation will be addressed under the new scheme? Frankly, the position is not good enough.

Allan Wilson: We would want to do everything that we could to eradicate late payment. Jim Johnstone can outline the steps that are being taken.

Jim Johnstone: Up until two years ago, we paid using a manual system, but now we are using a fully computerised system. It experienced some teething problems, but should be operating fine now. Certainly, the vast majority of the payments that were made in October and November, which are the months in which we make payments, were on time. Hopefully, they will all be on time when we next make the payments.

The Convener: After the first year, I was told that the problem was down to a changeover in the system, which is why I was surprised when the same thing happened the next year—strangely enough, it involved the same people. Are you confident that those difficulties will not occur this year?

Jim Johnstone: I am confident.

The Convener: I hope that, should I be spared and find myself in a position where I might be called upon to write next year, I do not have to.

Elaine Smith (Coatbridge and Chryston) (Lab): Paragraph 5, on page 4 of the draft scheme, is headed "Restrictions on approval of application: general", and sub-paragraph (5) refers to ministers not approving applications. Sub-paragraph (5)(c) specifies:

"where the trees, other than nurse trees, are intended to be used as Christmas trees."

The definition of nurse trees on page 3, under paragraph 2, is as follows:

"'nurse tree' means a coniferous tree which is planted to provide protection to tree seedlings and which is removed from the land within 10 years of planting".

Does paragraph 5(5)(c) mean that the nurse trees can be used as Christmas trees? Is there any restriction on how many nurse trees may be used? Is one nurse tree provided for each tree seedling? May several nurse trees be provided for each tree seedling? Do you intend there to be a mixture of trees?

Allan Wilson: The basic answer to that is yes, although David Henderson-Howat will go into that in more detail.

David Henderson-Howat: Essentially, the grant scheme is not intended to provide a grant for people who are planting Christmas tree plantations. On the other hand, it is accepted that, to create mixed woodlands, it is sometimes sensible to plant a mixture of conifers and broad-leaves so that the conifers can act as nurse trees and help the broad-leaves to develop. At a certain stage, the thing to do is to remove the conifers so that the broad-leaves can continue to grow. In those situations, the scheme is saying—in legal language—that if a person is cutting young conifers that have served as nurse trees, there is no problem selling them as Christmas trees.

Elaine Smith: I am still curious whether that might give rise to a loophole for people to get grants and produce Christmas trees. That is why I was asking how many nurse trees are allowed for each seedling.

David Henderson-Howat: I do not think that that would be a problem. There is a requirement on the farmer to maintain the woodland satisfactorily for 30 years. If, for example, the farmer left only a very small scatter of trees across the ground, it would be clear that the woodland had not been kept in existence for 30 years as required.

Mr Alasdair Morrison (Western Isles) (Lab): The minister will recall that he was one of the first people to be notified, on Friday, of the successful community purchase of the North Harris estate. I am sure that he will join everyone else in wishing everybody all the very best with that. The people of north Harris will develop and transform that part of the island beyond the scope of socioeconomic and cultural renewal. One of the areas that they will explore and positively pursue is that of crofter forestry.

I appreciate that the Executive is examining the regeneration of existing woodlands but, in crofter forestry, we are trying to replace trees that were burned down by the Vikings a thousand years ago on their brief visit—on their tour de force of the

Hebrides. What can I tell the people of north Harris over the next few weeks, as they get down to electing their trustees and putting in place what will be, in effect, the landowner? Can you or your officials give us guidance on crofter forestry?

Allan Wilson: I share your enjoyment at the advancement of community ownership in Harris, which has been occasioned by the support that the crofters there have received from this institution since its establishment. Crofter forestry has probably been the greatest quiet success of our strategy, with more than 1,700 crofters at the last count involved in forestry schemes. The new Scottish forestry grants scheme provides for continued grant support at existing levels. Had I listened to some industry voices, which sought to increase the grant per hectare, those 1,700 recipients would potentially have had their grant withheld, which would have been to their disadvantage.

I was concerned—as I know Alasdair Morrison and the committee are—to ensure that the success of the crofter forestry grant scheme is continued and that it is not affected by any reduction in the premium, which could have been brought about if the maximum amount of hectareage for which grant might have been payable had been increased.

David Henderson-Howat: I urge Alasdair Morrison's constituents in north Harris to get in touch with our conservancy office in Dingwall so that we can send out a woodland officer to help them with the way forward.

Mr Morrison: Excellent. The minister is free to make a personal contribution to the North Harris appeal that was launched recently. I have a leaflet about it that I pass to members now.

The Convener: It is nice to see someone who never misses an opportunity.

Fergus Ewing: I have a couple of technical questions for the minister. I notice that the existing woodland grant scheme is administered by the Forestry Commission and that the farm woodland premium scheme is administered by SEERAD. Some years ago, I had occasion to assist a client with such matters. The ground in question was in receipt of grants under other schemes. This question occurred to me at the time, and now I have the opportunity to ask the minister: would it not be simpler if one body were to administer both schemes rather than having two bodies administering two different schemes and two sets of paperwork?

Allan Wilson: I admit that that occurred to me, too. Basically, the steering group that we set up with the industry—perhaps your client was involved in it, I do not know—believed that there was no need for a merger, provided that the

process operated seamlessly. That is what we seek to do. That is the answer to the question. Had the steering group, which was representative of the industry and other stakeholders, regarded the situation as a problem, I would certainly have taken that on board and acted to implement the recommendations, but that was not the industry's response.

Fergus Ewing: I hear what the minister says. My anecdotal experience is that the schemes were administered fairly swiftly and efficiently, which is always pleasant, so perhaps there is no problem in practice. It just seemed to be simpler to have one body rather than two bodies dealing with what are essentially the same matters. Perhaps that might ease the problem that the convener mentioned earlier about the delay in payment of the grant.

Allan Wilson: I do not want these two gentlemen beside me to start fighting over who might implement such a scheme. Each of them implements different aspects of the same scheme. They appear to do so seamlessly without undue delay and in an effective and efficient manner, to such an extent that the industry did not come back to us and propose a single scheme. That is good enough for me.

Fergus Ewing: I have a final question. The Executive note states that both of the existing schemes will close for applications in February—so no schemes are available at the moment. Despite the fact that the statutory instrument, if passed, will come into force from 1 April, the Executive note says that the new schemes will open in June. Where there are civil servants, there must be reasons, so will you explain why no applications will be accepted for the next three months?

Allan Wilson: As I understand it, it is to test the computer system that was referred to previously.

David Henderson-Howat: At the moment, a lot of work is being done on developing the computer systems for the new scheme. The other point is that, because there are differences between the old and the new schemes, there has been a flood of applications in recent weeks up until the closure. The staff in the conservancy offices have much of the hump of applications from the old scheme to process over the coming weeks. Then, we need to train those staff to use the computer software for the new schemes. That four-month gap was discussed with the industry some months ago; it certainly was not sprung on the industry. There has been several months' warning that the four-month gap would happen. Agents have known about it and responded accordingly.

Fergus Ewing: So, do you have a target date by which you would expect timeous applications

that are submitted before June to be processed? Do you have a target for when first payments will be paid under the new scheme?

15:00

David Henderson-Howat: Under the new scheme, we will receive applications from the middle of June. The short answer on when payments will start to be paid is that that will depend on the nature of the applications. In the case of the most straightforward applications, involving the restocking of clear-felled land, payment will begin as soon as the planting has taken place in the autumn.

Fergus Ewing: I am sure that we would not want the crofters to wait.

Allan Wilson: We would not. The new computer system will be in place by the beginning of next year and will, I hope, expedite the cases of late payment to which the convener referred. Although the introduction of any IT system is fraught with difficulty, the objective is to expedite and make more effective the payment and grants system, as well as to ensure that public money is well accounted for.

The Convener: I think that members have exhausted their questions, so we will move on to debate the motion. I thank the Executive officials for taking part and for answering the committee's questions. I invite the minister formally to move motion S1M-3905, in the name of Ross Finnie.

Motion moved,

That the Rural Development Committee, in consideration of the draft SFGS Farmland Premium Scheme 2003, recommends that the scheme be approved.—[*Allan Wilson.*]

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I put on record my congratulations to the minister on introducing the statutory instrument. The scheme will come into force on the day after the day on which it is made, or on 1 April, if later. On many occasions, instruments have been brought before the committee that have been implemented before we were asked for our approval. This way is the right way to do things when there is not a rush. I understand that there are far more important issues to the nation, which we will discuss later, and I understand why those instruments have been dealt with as they have. Nevertheless, I put on record the fact that I think that this is the appropriate way in which to proceed, and I thank the minister for that.

The Convener: I do not wish to take anything away from those congratulations to the minister, but, as the instrument had to be considered under the affirmative procedure, the Executive would

have been in a bit of bother if it had not brought it to the committee at this stage.

Mr Rumbles: There have been many occasions on which we have been presented with material that has been—

The Convener: Indeed. We have had problems in the past.

Motion agreed to.

The Convener: I thank the minister and his officials for taking part in the meeting. I invite them to withdraw and join us for coffee for the next 15 minutes if they would like to do so. We cannot move straight to the next item on the agenda, as Ross Finnie cannot be with us until 3.15.

15:02

Meeting suspended.

15:16

On resuming—

Sea Fishing (Transitional Support) (Scotland) (No 2) Scheme 2003 (SSI 2003/116)

Fishing Vessels (Decommissioning) (Scotland) Scheme 2003 (SSI 2003/87)

The Convener: Members will recall that, following the Parliament's agreement to last week's business motion, the Sea Fishing (Transitional Support) (Scotland) (No 2) Scheme 2003 (SSI 2003/116) and the Fishing Vessels (Decommissioning) (Scotland) Scheme 2003 (SSI 2003/87) will be debated by the Parliament tomorrow morning.

I am grateful to the minister for volunteering to come and answer members' questions and to assist us in our deliberations prior to the debate in the chamber. I am sure that he is aware of the committee's views on the instruments, given our recently published report on the current issues affecting the Scottish fishing industry.

I think that I am right to say that the minister is also able to answer questions about the instruments that will implement restrictions on days at sea. However, as that is the subject of our next agenda item, I suggest, and ask, that members restrict their comments under this item to the two affirmative instruments that we are discussing.

I welcome Ross Finnie, Minister for Environment and Rural Development. I thank him for coming and invite him to introduce his officials before he makes his opening remarks. It is worth pointing out that, as we have a full agenda, I intend to

move on to the next agenda item at around 4 o'clock.

The Minister for Environment and Rural Development (Ross Finnie): I am joined by Robin Weatherston, the deputy head of the sea fisheries division in the Scottish Executive, Paul Cackette, from the Office of the Solicitor to the Scottish Executive, Ewen Milligan, from the sea fisheries division, and Donald Carmichael, the head of the sea fisheries division. Robin is more concerned with the technicalities that make up the statutory instruments.

I have one or two introductory comments to make. As the convener rightly said, there are two instruments to consider under the affirmative procedure. The instruments back the support package that we announced on 28 January. One instrument deals with the decommissioning scheme; the other deals with the transitional support scheme.

In general, the decommissioning scheme follows the approach taken by the successful 2001 scheme. It defines a fairly wide catchment of eligibility and will permit us—once applications have been received and decommissioning bids have been evaluated—to take informed decisions about the number and balance of vessels to be taken out of the fleet to allow us to meet our fishing mortality effort reduction target.

Following discussion with the industry, we have made some special provisions—notably, to extend eligibility to under-10-year-old vessels and to allow access to a 20 per cent grant premium for vessels that are subject to the cod recovery measures and which must reduce their fishing effort by 25 per cent or more. Those measures are likely to increase the unit cost of decommissioning, but they will allow us to consider for grants the vessels that contribute most to the cod fishing effort. They will also provide us with much greater flexibility in choosing the vessels that may be considered for decommissioning.

I am aware of some of the concerns that exist and which the committee expressed in its report. There has been some commentary on the number of vessels to be removed. At the outset, I want to make it clear that there is no predetermined number of vessels. The aim is simply to reduce fishing effort on cod by 15 to 20 per cent, to promote sustainability and to protect our position on days at sea. That is the right approach.

In giving evidence to the committee, I want to make it clear that both support schemes require European Community state aid approval. We cannot take decisions on grants or pay out money until such approval has been received. My officials are already pursuing that.

The transitional aid proposals are set out in an enabling statutory instrument. They are intended

to give serious transitional support to those who are directly affected by the changes that have been agreed. Because of the haste and difficulty with which the scheme has been introduced—on which I may be able to expand in response to questions—some of its fine detail is not set out in the statutory instrument. There is flexibility in some of the detail and arrangements of the scheme, and there is benefit in being able to adjust the scheme in the light of experience. The scheme is novel and breaks new policy ground. We do not pretend that the exercise has been easy and are grateful to those in the industry whom we have consulted and with whom we have discussed the detail of the scheme in an attempt to make it workable.

Together, the two measures represent a package that is designed to support the industry through the current challenges and to enable it to move towards a sustainable future. They are not alternatives. Some have argued that, without transitional aid, further decommissioning would be unacceptable, and we have accepted that. By the same token, transitional aid without the effects of restructuring would not be acceptable in conservation terms and would certainly not be acceptable to the European Commission.

I have provided a broad outline of the proposals and am happy to address the questions that members of the committee put to me.

Stewart Stevenson (Banff and Buchan) (SNP): We are relatively short of time, so I will ask three questions together. They are not related, except that they are all about the transitional scheme. They are essentially technical questions.

First, what is meant by

“historic activity of the vessel in respect of which the application was made”

in paragraph 7(2)(a), under the heading “Rate of payment”? I do not think that that is a new phrase, but it would be useful if you could put something on the record about it.

Secondly, the definition of “historic activity” in paragraph 7(3) refers to

“recorded landings of sea fish in respect of a vessel”.

Does that include landings of fish at foreign ports?

Thirdly, under the heading “Powers of authorised officers”, paragraph 10(6)(b), states that an authorised officer may

“inspect any document and, where any such document is kept by means of a computer, have access to, and inspect and check the operation of, any computer”.

In many instances that will require the disclosure of confidential information that is held by the owner of the computer to protect the information on the computer from access. What arrangements will be made to ensure that any information

revealed as a result of the proper inquiry of an authorised officer—such as the disclosure of passwords—and which is not germane is not disclosed to any other party? What arrangements will be made to assist the owner of that computer to reinstate adequate security after an authorised officer has perforce breached that security?

Ross Finnie: Your first two questions are related to the question of what will constitute historic activity. We are working in close collaboration with the industry to establish two elements that will, I hope, answer Stewart's questions.

We have been examining the records for the past year of vessel dependency on income from white fish. We have also been gathering data on vessels that used the relevant gear referred to in annexe XVII, which is closely related to that point. For example, we note those which have done so on an historic basis and those which have so in comparable six-month periods. Clearly, the use of those gears in comparable periods takes proper account of the most likely impact on those vessels of the measures that are about to come into force. Is that approximately what you meant, Stewart?

Stewart Stevenson: It is indeed, minister.

When you say that are looking at income derived from those white-fish species to which the restrictions apply, do you mean all or only some white-fish species? Also, are you looking at something more subtle than income?

Ross Finnie: The definition of historic activity in paragraph 7(3) combines the time spent, the gear deployed and the recorded landings. The recorded landings tend to show income dependency. We are examining how to factor them in fairly and equitably. The key element of our discussions with the fishing organisations has been to try to determine that from their perspective, so that we do not put an interpretation on figures that would not warrant such examination. Those are our broad parameters. We must ensure that the transitional aid targets those who will be most likely to need it as a consequence of the measures that are being evolved. That is why we must be sure that the historic activity of a vessel justifies aid. Also, we want to try to set criteria that will not invite a host of appeals; we are trying hard to prevent people from feeling that selections have been subjective.

Stewart Stevenson: Would it be fair to say that you are seeking to address the change in income derived from white fish between this calendar year and the previous one?

Ross Finnie: It is not possible to define that precisely. We are using that information as a proxy so that we can be sure about the categories of vessel that we use. Annexe XVII does not talk

about that, nor does it talk about historical activity. It further narrows selection to the use of gear. In other words, if we start with historic activity in terms of income and white-fish landings, we must then refine the definition to include gear. The issue of days at sea then arises, because some areas will be hit much harder than others by the restriction on days at sea.

Stewart Stevenson: I recognise and understand the fact that you are using objective measures as a proxy for something that you cannot get a firm grip on. However, there have been indications that white-fish prices are down again this year. To what extent will the transitional aid reflect both that and fact that catch volumes are down, perforce because of the new arrangements?

15:30

Ross Finnie: We chose the phrase "historic activity" because there are tremendous fluctuations for a variety of reasons. The only reasonable proxy that we can use is, as you were right to point out in your question, to have a definition of "historic activity". Everyone is suffering from the changes that were brought about by the regulation and those that are being effected in the marketplace. If we get the first bit right, I would hope that the proportionate change would reflect whatever is going on.

Stewart Stevenson: I am sure that there is more in that, but we have to move on.

Ross Finnie: In arriving at the totality, we include Scottish vessels' activity and their landings in foreign ports. It would be inequitable to deprive fishermen by defining fishing activity in a way that excludes foreign landings.

I will ask Paul Cackette to answer your third question, which was on disclosure of confidential information, authorised officers' being affected by that and how we would remedy breach of the disclosure.

Paul Cackette (Scottish Executive Environment and Rural Affairs Department): The provisions on what authorised officers can do are, in the Executive's view, necessary for the full enforcement of the order. However, by virtue of that, they are necessarily also intrusive.

Stewart Stevenson: Hence my question.

Paul Cackette: It is certainly correct that with those rights come responsibilities. An authorised officer will be obliged to exercise the powers in a way that is appropriate and necessary for pursuing the purposes for which access to information is taken. That begs the question how the practice is to be enforced or policed.

Paragraph 10 of the scheme deals with civil and criminal liability and states that

“An authorised officer shall not be liable in any civil or criminal proceedings”

for anything done when exercising those powers, provided that the officer was acting in good faith, there were reasonable grounds for the action taken, and that it was taken with reasonable skill and care.

The corollary is that if such an officer used information where he or she was not acting in good faith, the grounds for accessing that information were not reasonable or there was no exercise of reasonable skill and care, they would not enjoy the benefit of that protection. They would be liable if a person who suffered loss because of their actions were to start proceedings. They would not enjoy the benefit of that protection in circumstances where they went too far.

Stewart Stevenson gave the example of the use of passwords. It is difficult to know how the powers will be used in practice. It would surprise me if a password would have to be disclosed by a person in order to allow an authorised officer to get hold of information on a computer. I would have thought that that could be protected. In any event, passwords can be changed. I would not have thought that the disclosure of a password would be necessary if a person were co-operating, or assisting, with access to information on a computer.

Stewart Stevenson: I will be brief, but I want to close off this line of questioning. If the officer becomes aware of a potential breach of a law not within their purview, such information would not be passed to any other party.

Paul Cackette: The officer would not have powers under the scheme to disclose such information. The powers of any other citizen, if they were to discover such information, would be—

Stewart Stevenson: Do not let us go there, because that is too difficult for today.

Paul Cackette: There might be other duties in relation to serious offences. The scheme does not permit the officer to disclose such information, but I would not say that the officer would never do so.

The Convener: I know that almost all members want to put questions. I will extend the time that is available as much as I can, but members should bear in mind, in questions and answers, that we are up against a time limit.

Rhoda Grant: I have a couple of questions, which I will ask together to save time. My first question is whether the grant premium could be used to give the crews some form of redundancy

money. A vessel owner who bids for decommissioning money could look to the premium to give security or financial benefit to crews to tide them over while they find alternative employment.

If a balance is left in the decommissioning scheme after the required number of boats have been decommissioned, is there an opportunity for the Executive to come back, rebalance it—perhaps by putting more money into the transitional aid scheme—and open it up to onshore businesses as well? Those businesses will suffer because of decommissioning and the days-at-sea legislation.

Ross Finnie: It is not just a matter of the premium. In a sense, the scheme is entirely novel and, to an extent, we are rather dependent on the good will of the recipients. It has proved to be extraordinarily difficult to find a proxy to assess the potential numbers of crew involved or the potential level of expenditure—and therefore the potential real need for transitional support—other than the proxy of the vessel and, in particular, the vessel capacity units. Therefore, it gears up in terms of the size and scale of the operation of the respective vessels.

It is our clear policy intention, with the co-operation of the industry, that the scheme should not assist just one person—that is, the owner of the vessel. By using the proxy of the vessel, the intention is to give some transitional support so that the vessel owner can, if they have decided to stay in the industry, make some payments to retrain crew and perhaps also assist with some onshore facilities. I do not know whether Paul Cackette or Robin Weatherston want to talk about the enormous drafting difficulties, but I will run on quickly because of the pressures on time.

The premium arrangements and the under-10-year arrangements are designed to give the maximum possible opportunity, because—I repeat—we do not have a fixed number of vessels in mind. It is quite clear from talking to various ports and associations that they take a different view. Some now take the view that bids from some of the larger vessels may now be inappropriate, because of the changed circumstances with stocks.

As Rhoda Grant will be aware, given that it took £25 million to decommission 10 per cent of the fleet, grossing that up to 15 to 20 per cent will get close to £40 million. The scheme aims to be as flexible as possible, so as not to leave us in the impossible position where vast numbers of vessels have to be taken out. Given that the scheme introduces flexibility and the 20 per cent premium, and that we are allowing vessels under 10 years to come into the scheme, it is simply not possible at this point to speculate as to whether our rough-

and-ready calculation, grossed up from last time, will produce any money. We have to have people focusing in, but it might be for somebody else to do that. At the moment, it is difficult to envisage not using an amount that is very proximate to £40 million to achieve that 15 per cent, having put in those flexibilities.

On the crew issue, I think that it is impossible to define the issue legally, but Robin Weatherston may be able to provide an answer.

Robin Weatherston (Scottish Executive Environment and Rural Affairs Department): It is difficult to predicate money for a particular purpose. As the minister said, our calculations suggest that £40 million will be needed to remove—

Ross Finnie: No. Rhoda Grant's question was about defining how much of the premium might be used on transitional support to guarantee amounts for redundancy.

Robin Weatherston: None of the premium is related to transitional support. The amount of transitional support—[*Interruption.*]

The Convener: Could you speak a little more closely into your microphone? Many people are having trouble hearing.

Robin Weatherston: Yes, sorry.

I am not sure whether there is some confusion. None of the premium is related to the transitional support payments, the amount of which remains to be decided. We may be at cross purposes.

Ross Finnie: The definition of decommissioning is quite clear. A premium will be paid only to those persons who qualify under the other part of the regulation—that is, if they are able to demonstrate that, as a result of the scheme, their effort is reduced by more than 25 per cent. There is no reason why that should not happen by rote, but I am afraid that it is difficult for us to prescribe how persons should allocate their moneys under the scheme.

Rhoda Grant: I have one small supplementary, which goes back to the rebalancing that you talked about in the decommissioning scheme. You expect to take the money available. I am not asking you to say that you will definitely move any money left over into a transitional aid scheme, but I wonder whether you would be willing to reconsider the matter if that money should be available.

Ross Finnie: Things are certainly speculative at this stage. However, at the moment, we have to indicate a clear measure of intent to the Commission and demonstrate some relationship between the percentage reduction that we are seen to achieve and the amount of money

ascribed to the task. The Commission has required us to make both declarations.

Richard Lochhead (North-East Scotland) (SNP): You will be aware of Scotland's huge concern that the bulk of the cash in the aid package will be allocated to decommissioning. Every single fishing community and most organisations that have spoken on the issue have pointed out that there is far too much emphasis on decommissioning. Why are you not listening to them?

Ross Finnie: I am listening to them. However, we should go back to the start of this matter and remember that, in November, we tried to engage the Commission in a longer-term cod and hake recovery plan. We placed on the table our belief that any plan should encompass a range of measures such as real-time closures of spawning grounds, wider and extended use of selective gear, some degree of effort limitation and some element of decommissioning. However, the only two elements that the Commission was interested in were effort reduction and decommissioning.

Because those were the only two elements on the table, the focus of negotiations was extraordinarily narrow. We had to make it clear that, although we disputed the way in which the measures—particularly effort limitation—were being prescribed, we were committing ourselves to some form of decommissioning because of the conservation element. I accept that the sheer arithmetic of such an approach means that we end up spending substantial sums to ensure that we secure the conservation objective. However, I know of no other policy instrument that allows us to do that. It is not that we are not listening to communities and organisations; instead, we are trying to do what the Executive has consistently tried to do, which is to balance meeting conservation objectives with trying to sustain our communities. The Executive has committed £50 million to that end.

Richard Lochhead: You said that, initially, one of the options was an element of decommissioning. The difficulty that most people have with the aid package is that almost all the money is being allocated to decommissioning, rather than some money being allocated to a small decommissioning scheme. I understand that you have received 15 separate responses to your consultation on transitional support. Of all the responses that you have received on that issue and indeed on the statutory instruments on decommissioning, how many agree with your tactic of splitting the allocation 80 per cent/20 per cent?

Ross Finnie: This is not a question of tactics. We are trying to implement decisions that have been agreed with the Commission. People are

deeply concerned about how we move forward and how we try to secure improvements to the present scheme. To be blunt, the prospects for any improvements would be almost zero if we went back to the Commission—as we would like to do—to express our disappointment at the fact that it did not discuss with us real-time closures and improved or increased use of selective gear while at the same time we proposed to remove from the table the decommissioning proposals that were discussed in November and December and that were then made into technical regulations. Changing our tactics with the Commission would prejudice and put at risk what has already been achieved, even though that has serious flaws.

15:45

Richard Lochhead: Are you saying that the EC will accept only a 15 per cent reduction in effort through decommissioning?

Ross Finnie: No.

Richard Lochhead: So that is not the case.

Ross Finnie: No. The Commission has said that there will be a 65 per cent reduction in effort. The Commission calculated back from the figure for our average number of days at sea—which is 240—and took off 65 per cent, which left us with seven days at sea a month. We tried to move the Commission from that figure by using a slightly different basis. It has operated on the basis of adding to days at sea to take account of other measures such as previous and future decommissioning, which is how we got from seven days to 15 days a month. That was part of the negotiations, and to renege on that would put us in further difficulties in any future negotiations.

Richard Lochhead: In January, you told the Parliament that the future decommissioning scheme, not the one that has gone by, would be worth two days out of the 15 days. That implies that, without that decommissioning scheme, which we are now considering, we would still have 13 days, not 15 days. Is it not the case that there are ways of reducing effort other than by decommissioning?

When I asked you a parliamentary question about the impact on the reduction of effort in the white-fish fleet of the transfer of white-fish licences to the pelagic sector, you said that you could not work that out because it would

“take some time and resources and could only be undertaken at likely disproportionate cost.”—[*Official Report, Written Answers*, 25 February 2003; p 3081.]

Is it not the case that you did not take that factor into account when you worked out the effort reductions for the white-fish fleet and that there are options other than using 80 per cent of the aid

for decommissioning? For example, it would be more sensible to have a much smaller decommissioning scheme and to put the rest of the cash into transitional aid for the onshore sector and the fleet.

Ross Finnie: The matter is simple. You are right that, instead of having an element of decommissioning we could have taken the whole thing in days-at-sea restrictions. I do not think that the figures of two or five days necessarily reflect the percentages of effort reduction, which was one of the arguments that we had with the Commission. However, if we took decommissioning off the table in the negotiations with the Commission, the prospects of Scotland making serious progress towards an improved longer-term package would be narrow. Such a move would ignore completely the nature of the negotiations that took place in December.

Richard Lochhead: You miss the point, minister. You told the Parliament that the future decommissioning scheme was worth only two days out of the 15 days. That means that if there were no decommissioning, we would still get 13 days. If there were only a limited decommissioning scheme, would that not make up the difference of two days? How do you balance the £40 million decommissioning package with those two days at sea from the Commission?

Ross Finnie: I agreed that the figure of two days was a result of the way in which the matter was calculated. The calculation to work out the number of days at sea from the 65 per cent reduction is done on a crude percentage basis—I know of experts who dispute that that is the correct way of doing it. The figure of two days represents the percentage change that would result from a 15 per cent reduction in effort. If we removed that reduction, we would have to add back the greater percentage of days at sea. The Commission sought a target of a 65 per cent reduction in effort. It would have been a dangerous starting point to ignore the conservation element that was required in the package.

Richard Lochhead: I have one final question.

The Convener: Briefly, please, Richard. Other members want to ask questions and you have had your fair share of time.

Richard Lochhead: If, under decommissioning, the vessel and licence are taken back, but not the quota, surely that is not a conservation measure, but a purely economic one to allow people who want to leave the industry to do so. In fact, if the quota is not taken back, how will decommissioning be even an economic measure? The remaining boats in the fleet will not be able to enjoy the quota that has been left behind after the vessels and

licences have been taken away from skippers or boat owners.

Ross Finnie: Any fishing boat or vessel engages or indulges in a variety of actions, not the least of which under the current policies are discarding and other activities that contribute to fishing effort. It is easier to measure such activities in terms of individual vessels rather than a collection of vessels. A larger quota in the hands of a single vessel, if it makes the vessel more viable, removes the pressure on the vessel to engage in activities such as discarding. There is no doubt that the scientific evidence suggests that larger quotas have a material impact on the total effort as measurable in any particular vessel's activities. I dispute strongly the point that decommissioning does not reduce effort.

We have covered the economic issues before. The Government issued the licences without a charge, but the market and trade in those licences were set up by the industry, which leads to the awkward situation that value is attributable to licences. That situation is attributable to a trade that is entirely in the hands of the fishing industry—Government does not engage in the trade. Equally importantly, as the committee's excellent report points out, we must watch carefully the outcome of the Shetland case before we adjudicate on the state-aid implications of Government intervention.

Mr Jamie McGrigor (Highlands and Islands) (Con): Could you clarify what catchment area of vessels you are targeting for decommissioning? Is it the 500 vessels that trawl for demersal fish? Is it the 300 hybrid vessels that fish for white fish and prawns? Or is it the 180 dedicated white-fish boats?

Ross Finnie: It is all vessels—the 500 demersal ones and an element of the 300 hybrid ones. However, when making their bids, they would have to demonstrate that they engage in a reasonable amount of white-fish and cod activity, so that in aggregate—

Mr McGrigor: Cod or white fish?

Ross Finnie: It is specifically in relation to cod. In effect, that means, as I said, that the 500 demersal vessels, and the other 300 vessels, are eligible for the decommissioning scheme. Without a shadow of a doubt, all those vessels are technically eligible for the scheme but, in assessing the bids, we want to achieve a 15 per cent reduction in cod fishing.

Mr McGrigor: How many vessels do you expect to decommission in this round?

Ross Finnie: I have repeated ad nauseam that I have no fixed figure in mind. I have listened to all sorts of organisations, which have expressed a

variety of views. Some want to keep the numbers to a minimum. I listened to those views and that is why I extended two important provisions from the previous scheme into the new scheme. There will be a 20 per cent premium for those who demonstrate a reduction in effort of more than 25 per cent and I have included vessels that are under 10 years old. Therefore, the range and ability within each port will be much broader than previously, which could reduce the number of vessels that might be involved.

Mr McGrigor: I regard the quotas—or, rather, the lack of quotas now—as the main problem; what will happen to them, bearing in mind the fact that there is a lot of quota left over from the previous decommissioning round? As far as I am aware—you can correct me if I am wrong—the new regulations forbid the transfer of time or days at sea from a vessel that is decommissioning. Therefore, even if fishermen could get more quota in order to increase their incomes—which have been halved by the slash in quotas—they will not have the days at sea or the time in which to catch that quota. What will happen to the quotas that cannot be used?

Ross Finnie: There are two separate issues. There is the issue of transfer liquidity within the market, which Richard Lochhead raised. I have had interesting discussions about that with people in the industry, particularly those on the financial side. However, the issue that Mr McGrigor raised arises from the current regulations' inflexibility on the days-at-sea regime, which is one of the matters that we raised with the Commission. We have consistently pointed out to the Commission that some aspects are not helpful. However, the regulation in annexe XVII, as it is currently written, does not provide for economic transfer. Robin Weatherston might have a comment.

Robin Weatherston: What the minister said is correct. It remains to be seen what will succeed annexe XVII and how the days-at-sea restrictions will impact on that and the ability of fishermen to take their quotas.

Ross Finnie: As members will know, some Commission members have now wakened up to the fact that many of the points that we put to the Commission are valid. Those points are now under consideration.

Mr McGrigor: When will the Commission let you know its answer to those points?

Donald Carmichael (Scottish Executive Environment and Rural Affairs Department): I think that there might be a new annexe XVII within a couple of weeks. However, that would only be a proposal and would have to be adopted either by the Council of Ministers or by the Commission. We also hope that in a similar time scale the

Commission will kick-start a discussion on a substantive successor regime to the interim regime, which is what annexe XV/II is meant to be. We hope to see some movement in the next couple of weeks.

Fergus Ewing: Minister, you have persistently said that you do not know and cannot know how many boats will be decommissioned. If that is so, how can you be so sure that the decommissioning costs will be £40 million? If you have no plan for the number of boats, how can you have a fixed plan that £40 million must be set aside for decommissioning?

Ross Finnie: The calculation is done not on the basis of the number of boats, but on the basis that the previous scheme decommissioned about 10 per cent of fishing effort in the fleet and cost £25 million. A rough-and-ready calculation shows that the decommissioning costs will be close to £37.5 million and we have added into the pot the mix that we will include in the scheme: vessels under 10 years of age will be included and we will extend the scheme to those that will be eligible for the 20 per cent premium by virtue of the fact that the reduction in their aggregate effort will amount to more than 25 per cent as a consequence of the measures. I am not in any way claiming that this is an exact science, but that is a not unreasonable assumption to make on the basis of the previous scheme.

Fergus Ewing: The Scottish Fishermen's Federation has provided us with a briefing today. It disputes your methodology, which you have said is crude. The SFF states:

"On recent precedent the budgeted sum of £40m would be sufficient to remove at least 150 and perhaps as many as 170 vessels from the fleet. If, as has been stated, the scheme should concentrate on dedicated whitefish vessels, catching cod, the scheme would eliminate all but a few dozen vessels from the white fish fleet. Since neither the Executive nor the Commission has ever stated that the intention is to annihilate Scotland's capacity to operate a white fish industry it must be assumed that the budgeted figures result from a miscalculation."

That seems to be a measured and careful formulation from the SFF.

Ross Finnie: No, it is not. With all due respect—

Fergus Ewing: If I may finish, please.

The SFF concludes:

"A carefully targeted decommissioning programme of no more than £25 million could achieve the required reduction in fishing effort."

There must be a difference of opinion between the SFF and the Scottish Executive. How can you be so confident that you are right and it must be wrong?

Ross Finnie: The first scheme took out 10 per cent of fishing effort; no vessels in the previous scheme were under 10 years old and the 20 per cent premium rule did not exist at that time. By the way, we are not focusing exclusively on the 180 vessels. The notion is that we are targeting deliberately the decimation of the 180 dedicated vessels, but that is not the purpose of the scheme. As I said directly in response to Jamie McGrigor, those eligible for the scheme are those engaged in fishing effort on cod. Theoretically, more than 500 vessels are in that category. I repeat that we have introduced two distinct elements: vessels under 10 years and vessels that will qualify for the 20 per cent premium. Given that it cost £25 million for a 10 per cent reduction, it seems to me that to get a reduction of about 15 to 20 per cent it is not unreasonable arithmetic to provide for a cost of £40 million.

16:00

Fergus Ewing: I hear what you say, but I repeat that the SFF, which is entitled to be taken seriously, does not agree with that approach.

You said that the committee produced an excellent report last week. That report had all-party agreement and called for rebalancing and for decommissioning cash to go to crews and onshore creditors. Is it not pretty easy to devise a scheme that can provide for direct payment of the decommissioning grant to individuals other than the single owner or owners of a boat and to secured creditors, crews and other creditors? Even now, should you not consider that approach?

Ross Finnie: I am bound to say that I disagree that such a measure would be simple.

Fergus Ewing: I said not that it would be simple, but that it would be possible.

Ross Finnie: Depending on the structure under which a vessel is owned, it might be possible to establish the persons who are affected as the result of a charge and to disclose the nature of a secured creditor. That might not disclose the amount in every case. Establishing the ordinary creditors could involve considerable difficulty, not to mention potential dispute. I hear what you say and, as I said to Rhoda Grant, we depend heavily on the good will of those whom the scheme affects. However, to specify in an equitable manner the range and nature of persons involved and providers of disparate services to the vessel owner throughout a harbour would be extraordinarily complex and time consuming.

Mr Morrison: You will not be surprised to hear me mention displacement. I would appreciate it if you outlined your intentions and how they will be implemented.

Robin Weatherston: We are considering that issue carefully while we draw up the detailed arrangements and the conditions that will be attached to transitional aid. Ministers will have to make final decisions on those matters, but we are acutely alive to the possibility that vessels that previously fished for white fish on a given number of days might elect to diversify into prawn or shellfish fisheries or other fisheries on which others depend.

Ross Finnie: What will finally be put before me is a range of options that will include a potential penalty on those who receive transitional aid because they do not enter a prawn fishery, for example. Should they seek to supplement that aid by displacing activity into the prawn fishery in Alasdair Morrison's area, they would be subject to retention or recovery of payments.

Mr Rumbles: I was a critic of the Executive's first decommissioning scheme two years ago. I felt so strongly about the fact that no aid was available for a tie-up scheme that I voted against the scheme. Richard Lochhead focused his questions on the fact that £40 million, or 80 per cent, of the aid is for decommissioning, but only £10 million, or 20 per cent, is for transitional measures or a tie-up scheme. Only two years ago, no aid was available for what are now called transitional measures—they are a tie-up scheme, in effect—and all the money would have gone to a decommissioning scheme as a result of the first vote in Parliament, but that was tweaked by the second vote, which made me much happier. However, now, up to £10 million is available for the transitional scheme and tie-up measures. What convinced you of the benefits of putting together such a package with both elements at the same time, which we did not have two years ago?

Ross Finnie: It was the nature of the measures that emanated from the December council meeting, which not only had an element of conservation about them, but clearly had two elements that bore down extraordinarily heavily on the white-fish fishery—a combination of the days-at-sea regime and the swingeing reductions in TACs. It seemed to me that, in those extraordinary circumstances, it was impossible to allow fishermen time to assess the immediate nature of the days-at-sea restriction and the ramifications of the reductions in quota. It was essential to have two elements to the package to allow both those who might want to take advantage of a conservation measure and those who might want support to weather the storm to come to a more orderly and considered view.

Mr Rumbles: You have hinted that the decommissioning scheme has been worked out by rule of thumb and that you are basing the amount of effort that is being taken out on the previous

scheme from two years ago, so that the amount comes to roughly £37.5 million. It seems to me that there may be some slight flexibility to move funding from one part of the scheme to another. Will there be any chance of increasing the scheme by more than the £10 million? I appreciate the need for at least £37.5 million to go into the scheme. Is there any chance of getting more than the £10 million, which, nonetheless, is a lot more than we got two years ago?

Ross Finnie: As I said earlier—I cannot remember whether it was to Richard Lochhead or to Rhoda Grant—we are obliged not only to confirm the policy intention regarding effort reduction, but to give an indication to the Commission of the monetary sum that we have ascribed to the scheme. For the moment, the Executive's commitment is to provide £50 million. I appreciate the fact that members want to press me about what flexibility there might be, but I would not want to raise hopes unnecessarily. We must simply proceed on the basis that I have outlined.

This is not a precise science, and I have spoken to the SFF, which has a desire for a much lower measure. We have included the two measures that make the scheme slightly different monetarily, to give greater flexibility and to help people who want to reduce the number of vessels: we have included vessels that are less than 10 years old and vessels that will qualify for the 20 per cent premium. It is very difficult to rule in or rule out what you suggest. We must indicate to the Commission our earnest intent in both regards.

The Convener: I hope that Margaret Ewing will forgive me for not having welcomed her as a visiting member to the committee.

Mrs Margaret Ewing (Moray) (SNP): Thank you, convener. These days, I am beginning to feel as though I am a permanent fixture on the Rural Development Committee.

I hope that I misunderstood the minister when he seemed to say that the SNP is opposed to decommissioning. The SNP is not opposed to decommissioning. Our party policy has been very plain. The dispute is about the distribution of the package that is before us. We want recovery, not redundancy.

Let us return to paragraph 10 of the SSI on transitional support. I have read many statutory instruments in my life, but the powers of authorised officers are the most draconian that I have ever seen. Paragraph 10(1) states:

"An authorised officer at all reasonable hours and on producing, if required to do so, some duly authenticated document ... may exercise the powers specified in this paragraph."

Elsewhere, the instrument states that an officer has a right of entry to premises where they have "reasonable cause to believe" that something is "a relevant document", even if the premises are somebody's dwelling house, and that

"an authorised officer ... may be accompanied by such other person as the officer considers necessary".

There is a whole series of measures that I find draconian.

Can the minister tell me what the cost will be of paying those authorised officers? Is there a contingency fund to pay for the supplementary people who might be needed? Who would they be? Would any training be given to them?

Ross Finnie: We envisage that, almost without exception, the authorised officers will be members of the Scottish Fisheries Protection Agency. We do not intend to engage additional people. The activities of the SFPA in relation to the order will be contained entirely within the SFPA's current budget. The powers might seem draconian, but they have to be spelled out in detail.

Paul Cackette: The powers are considered necessary, but there are a number of qualifications, one of which I alluded to earlier and others of which were referred to in the question. We must always try to balance the need for effective enforcement with a respect for the privacy of individuals.

The Convener: That brings us to the end of our consideration of the schemes. I thank the minister and his officials for answering our many and varied questions and invite them to remain for the next item on the agenda.

Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003 (SSI 2003/56)

The Convener: Our next item of business relates to the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003. Richard Lochhead has lodged a motion inviting the committee to recommend that nothing further be done under the order. The Subordinate Legislation Committee reported on the order in its 18th report of 2003 and made a number of comments. An extract from the report has been sent to members.

Again, I propose that we have a question-and-answer session to clarify purely technical details. When that is complete, we will move to the debate on the motion, in which officials cannot take part. Minister, would you like to make any opening remarks?

Ross Finnie: This is a difficult issue. We have to focus on the purpose of the instrument and the law that underpins it. Clearly, there is a huge political debate about the issues that surround annexe XVII in relation to the total allowable catch

and quota regulations and, as Donald Carmichael indicated, there are outstanding issues.

We must concentrate for a moment on where the order stands in relation to European Union law and on where the Scottish Parliament stands in relation to the instrument. The need for the order flows from the requirements of annexe XVII of the fisheries council regulation 2341/2002. In terms of domestic law, there is no question but that the Scottish Parliament has an obligation to transpose that and to make orders that provide for implementation of the days-at-sea regulations.

I particularly want to draw the committee's attention to additional matters. Some issues are at the discretion of member states and can give advantages to the industry in terms of the implementation and application of annexe XVII. In particular, in drawing up the instrument to transpose the arrangements into domestic law, we have provided—as is only just possible within the instrument—four additional features: we have created a two-month rather than a one-month effort management period, which offers fishermen more flexibility to manage their fishing operations; we have arranged for the transfer of days from one management period to the next; we have arranged for the transfer of days between vessels in order to facilitate a more efficient and viable operation across the fleet; and we have incorporated in the amendment order procedures for fishermen to make representations to ministers about any decisions to deduct fishing days as required by annexe XVII.

If we left things as they stand, we would not be carrying out our obligation to transpose the arrangements and we would not be affording our fishermen those limited but nevertheless important additional flexibilities in translating the arrangements into domestic legislation. It must be remembered that annexe XVII has direct effect. Even if we did not introduce the domestic legislation and enforcement provisions, fishermen would still technically be covered by the generality of annexe XVII.

16:15

Of course, there is another issue, which is that we must try to create a different atmosphere and encourage the Commission to bring forward as quickly as is humanly possible not just amendments to annexe XVII, but provisions that would take us beyond the interim measures. In the circumstances, it would be imprudent for us to send out a signal that we are unwilling or reluctant to meet our European obligations and that we wish to annul the instrument. Doing so might send out the wrong message to the Commission when we are trying to build greater confidence with those with whom we have spoken in recent days.

I understand the inherent dislike that many members have for the measures that the order provides for. We wish to improve matters and we continue to pursue that, but, with all due respect, there is a risk of shooting the industry and ourselves in the foot if we decide to annul the instrument. As I said, doing so would remove important flexibilities and rights of appeal and would leave our fishermen simply implementing the generality of annexe XVII without those flexibilities and rights of appeal. I hope that I have set out the general position. As always, I will be happy to take questions.

The Convener: I thank the minister and remind members that questions should be put for the purposes of clarification and explanation—we will have a debate later. As the motion is in the name of Richard Lochhead, I invite him to put questions to the minister.

Richard Lochhead: I will say why I lodged the motion for annulment. Unfortunately, we are having a retrospective discussion of the order—its practical arrangements are already in force. We have no alternative but to lodge a motion of annulment, as no other options exist to ensure that the committee has the opportunity to express a view. In moving the motion, I understand that I must question the minister.

The Convener: You will move the motion later and we will have a debate later—this is a question-and-answer session involving the minister and his officials.

Richard Lochhead: In that case, will the minister say whether it is guaranteed that Europe will make the necessary changes to the legislation and that we are not relying simply on Europe's word, given that it has often broken its word in the past? Do the proposed amendments address all the concerns that the industry has expressed since the arrangements were put in place at the beginning of February?

Ross Finnie: I regret that I do not think that I can give absolute guarantees that account has been taken of every proposed change. Perhaps Donald Carmichael can outline the areas in question.

This might not be the final word on the matter. We have made considerable progress. As I said to the committee when I appeared before it last time, the people who have been dealing with the changes were by and large not involved in the December negotiations and appear to have been better able to understand some of the serious flaws in the original draft. Donald Carmichael might like to discuss the broad areas in which we think we might have made some progress, although we have not seen the draft measures.

Donald Carmichael: The general aspiration that has underpinned all our discussions has been to

achieve greater economic and commercial flexibility. The following examples are merely illustrative. First, we have been pressing for a more flexible definition of a fishing day—why not just have a 24-hour period? We have also been pressing for more flexible arrangements under which vessels would be allowed to transfer days. Although those arrangements would have to be subject to appropriate limits, a number of smaller boats might be able to transfer days that they do not need to bigger boats, for example.

We have pressed for sensible arrangements to take account of breakdowns or what the lawyers call force majeure. We have also pressed for a solution for the nephrops fishermen, who are inadvertently caught by the regulation because they use twin rigs and nets of 100mm mesh size. Those examples illustrate the sorts of issues that we have been discussing. As I said, the indications are that the Commission will produce a bit of paper either this week or next week. I cannot guarantee when that will happen, but the indications are that the Commission will shortly produce something that will be helpful in the areas that I specified.

Richard Lochhead: Given that the issue was down for discussion in committee today, it is wholly unsatisfactory that officials have not yet seen the draft and that we are having to work on the basis of a hypothetical situation. Perhaps the minister can comment on the time scale for the draft. Donald Carmichael has just said that we will see it in the next week or two, but what about the debate tomorrow in the chamber? All the SSIs that are before the committee today are interlinked in that respect.

I also want to ask the minister about the time scale for the measures. Once the SSIs are passed by the committee and the Parliament, the powers that are granted in relation to the days-at-sea measures are in place until the end of the year. Is the minister confident that those powers will be replaced on 1 July as the industry and everyone else was led to believe?

Ross Finnie: I will take the last point first. The whole process is about rebuilding confidence and bridges with the Commission. As Donald Carmichael said, in addition to engaging on a regular basis with the Commission on the particular issues that relate to annexe XVII, we have been very much in the vanguard of pressing the Commission to bring forward alternative proposals for discussion.

I cannot give a guarantee about the time scale. As I indicated earlier, however, we will spare no effort in supporting the introduction of the measures, although whether we will support the detail is a different matter. We will engage with the Commission in the way that we attempted to

engage with it on a cod recovery plan during October, November and the earlier part of December.

I regret that there is no draft. As I said, we have to deal with what is a very unsatisfactory situation as we find it. I take Richard Lochhead's point that lodging a motion for annulment was the only way of securing a debate. My plea to the committee is that we try to discuss the progress that has been made. We are trying to establish with the Commission that we take seriously what it is doing, albeit that we are highly critical of it. Given that we are trying to do that, not implementing the measure would give out entirely the wrong signals.

We are in the extraordinarily difficult position of trying to secure further amendments while not wanting to give out the signal to the Commission that we are seeking in some way to dilute its efforts in respect of annexe XVII. I understand the concerns of all members about the process. I, too, have concerns. It would have been enormously helpful for the Commission to have produced the draft. It has not done so, but that is not for want of trying by my officials.

Mr McGrigor: I remain convinced that the main problem that the fishermen face is a lack of quota. I am sure that the minister is aware that an average trip for a dedicated white-fish vessel is about nine days. Nine cannot be fitted into 15 more than once, nor can eight be fitted into 15 more than once. I take on board what the minister said about having a two-month plan, which would presumably bring us to 30 days, but does he understand that that would basically change the whole complexion of the white-fish industry and the way in which it works?

Ross Finnie: Yes, I understand the point perfectly, but that will not happen by my design. We have received all sorts of representations on the issue. I am bound to say to Jamie McGrigor that we have tried to interpret the regulation within the flexibility that is available for a domestic legislature so as to address the point that he made at the outset of his remarks. We are introducing the two-month period to overcome the near impossibility—indeed, the impossibility—of getting nine to divide into 15. I do not suggest that implementing the two-month period is the answer, but it will introduce a welcome flexibility for a large number of vessels. That is one reason why I think that we should adopt the measures, albeit that they may need to be amended in the light of what we have been discussing.

Mr McGrigor: Will the minister clarify whether, if a vessel did three trips in two months that amounted to 27 days, the three days that were left over could be handed on to another boat?

Robin Weatherston: The simple answer is yes. Inevitably, things are more complicated than that because of controls on capacity and so on, but the domestic legislation that we propose would allow that sort of flexibility.

Mr McGrigor: Is there a danger that, in any future negotiations with Brussels on the common fisheries policy—if it still exists—the days-at-sea scheme will be considered to be the track record? In future times, might Brussels consider the catching capacity of Scottish vessels under that scheme to be the historic record and so think that the capacity is less than has been the case?

Ross Finnie: I seem to recall raising that issue in December. I said that, if a new regime is introduced, any measures should not be used for the purpose to which Jamie McGrigor refers. We were, and remain, alert to that possibility. Given the nature of the discussions that we are having, and if there is to be a continuation of effort and we move away from a crude days-at-sea scheme to a kilowatt-days scheme, I hope that what the member suggests will not be the case. I think that we will move into different territory at that stage.

Mr McGrigor: Last, given the fact that we have had such enormous quota cuts, why was it necessary to have a days-at-sea scheme at all?

Ross Finnie: The issue was twofold. First, there was a need to start on a plan for cod recovery, which clearly involved effort limitation. That was part of the annexe to the quota cuts. One could argue—as Jamie McGrigor has argued—that the nature of the cuts meant that we were in a different situation. However, two quite separate debates were going on. One debate was about a recovery plan that contained other elements and sought to reduce effort by not less than 65 per cent, and there was another, separate debate concerning the relationship between all the species and the need for a further reduction in cod.

I share Jamie McGrigor's analysis that, at the end of the day, it is best if the impact on the fishermen is evenly distributed between days at sea and quota. Possibly, the impact should come more from quota.

16:30

Fergus Ewing: I think that Mr Carmichael mentioned that one of the things for which the minister is pressing is recognition of the fact that the nephrops fleet, which uses twin rigs and 100mm nets, has inadvertently been caught in a measure that is intended to limit cod-catching efforts. The minister is aware that, of the 400 tonnes of fish landed at Mallaig in about the past year, only 4 tonnes have been cod. Therefore, the bycatch is not only minimal but virtually de minimis.

What response has been received from the Commission on the specific proposals that Robert Stevenson of the West of Scotland Fish Producers Organisation and Hugh Allen of the Mallaig and North West Fishermen's Association have made? Will those people be consulted? Will you meet them to discuss any response that you receive from the Commission on the need for particular measures to allow the nephrops fleet to continue?

Ross Finnie: With the prospect that the Commission would not make such a proposal, we consulted the industry on the unfortunate measures that might have to be taken to remove the clearly unintended effect of nephrops fishermen being taken into the gear restrictions by their using 100mm mesh. As Fergus Ewing knows, we have consulted extensively the nephrops fisheries on the west and east coasts on what changes might be made to the gear to get them out of that restriction. However, as Fergus Ewing will tell me, and as I appreciate, many nephrops fishermen are unhappy about that prospect because it drives them down an anti-conservation and anti-quality road.

We have been heavily engaged in the consultative process. Once we get proposals on all the issues—not only the nephrops fishery but the other matters—we will want to engage with those affected. I hope that we get a clearly and simply worded exemption, which would avoid us having to take action that might force us to take anti-conservation measures. The fact that we have had to contemplate anti-conservation measures has concentrated minds wonderfully in Brussels.

Fergus Ewing: My last question is general. A great many fishermen and their wives have stated that fishing is an inherently dangerous activity and that the automatic consequence of a restriction on the number of days on which one is permitted to fish will result in fishermen feeling that they have to continue fishing in weather in which they would hitherto not have done so. Does the minister accept that a consequence of the scheme will be to increase the already risky nature of fishing and the possibility of serious mishap or fatality?

Does Commissioner Franz Fischler take that factor into account at all? It seems to me that there is an attitude of complete intransigence on that aspect. As the minister knows, I have raised the matter in every fishing debate, but I have yet to hear the minister comment on it. I would also like to know what response he receives when he raises that argument with the commissioner.

Ross Finnie: Such cases have been brought to our attention. Notwithstanding the absence of clear authority in the instruments, my position and that of my officials is that, on questions of safety, it is clear that the guidance is to put safety first.

Perhaps Donald Carmichael's earlier response, in which he referred to breakdowns and talked about force majeure, was not entirely clear. I am sorry—we should perhaps have expanded on it. At its heart were instances in which the rules' total inflexibility could, as Fergus Ewing rightly says, force fishermen to go to or remain at sea in circumstances that are simply not safe. We are pressing that issue, and we are trying to interpret the rules as sensitively and compassionately as we are able.

We are doing that off our own bat. I am bound to say that I would prefer to have legal cover, but we are not letting that interfere with us giving guidance. We are quite unequivocal. There is nothing between Fergus Ewing and myself because we both realise that safety is paramount.

Fergus Ewing: I would expect nothing less. Will you comment on what Franz Fischler said when the matter was raised with him?

Ross Finnie: In the regular discussions that we have had in Scotland and in Brussels about amendments to the current regulations, the issues of safety, breakdowns and force majeure have been considered. We will be bitterly disappointed if those issues do not form part of the amendments.

Fergus Ewing: One hopes that the onus will not be on the fishermen to prove that they qualify for exemption in those circumstances.

Irene Oldfather (Cunninghame South) (Lab): I would like clarification of something that the minister said earlier. As a member state, do we have a legal obligation to implement the measures? Would failure to transpose them into legislation leave us open to infraction proceedings? Could infraction proceedings lead to financial penalties? If that were the case, would the money come out of the United Kingdom budget or the Scottish block grant?

Ross Finnie: The answers to that would be yes, no, yes, yes and no.

The Convener: Thank you, minister.

Ross Finnie: The regulations have the same legislative effect as any other piece of EU legislation. The constitutional position is somewhat anomalous because of the quite proper right to lodge—as Richard Lochhead has done—a motion of annulment. If passed, that motion would lead us into an interesting constitutional position, because the Scotland Act 1998 clearly obliges us to implement the regulations.

Notwithstanding those difficulties, I appeal to members to understand that there are additional flexibilities in the regulations. We also appear to be getting movement from the Commission, although it has not been made clear whether the Commission will use its own powers or send the

issue back to the agriculture and fisheries council that is to be held in March, which is slightly disappointing.

In theory, not implementing the measures would lead to infraction, but we ought not to go there.

Irene Oldfather: Did you say that any money would not come out of the Scottish block grant? I understood that although the infraction proceedings would be against a member state, the money would come out of the Scottish budget.

Ross Finnie: If we voted against implementing the regulations, I suppose it would, yes, because we would have caused the mischief—it would have been at our hand.

Stewart Stevenson: My first point is about a significant constituency interest. Do you intend to add Macduff to the list of designated ports? Landings there exceed those at several ports that are on the designated list. I will not name them because that would allow you to take them off the list.

Alternatively, will you reinstate the four-hour notice procedure that existed previously? I draw the minister's attention to another order that is before the committee today, SSI 2003/88, which continues to allow such provisions of prior notice in relation to unsorted herring. Why are the people of Macduff being denied that right?

Ross Finnie: We are conscious of the administrative burdens that are arising as a result of the changed arrangements. We are trying to take an overview. You will not be surprised to hear that Macduff, although it is almost the only case that we should be considering, is not the only case that has been put to us. We are considering the issue carefully, but there are enforcement and other issues for us to consider through the SFPA. Representations have been received, and we understand the issues that have been put to us. We are reviewing the implications. It is a question of resources—if we do it, how do we regulate and enforce it?

The issue does not relate solely to Macduff. If we were dealing with only one port, the decision would not be difficult, but we have received representations from several ports. The matter is under active consideration at the moment.

Stewart Stevenson: It does not appear that you would need extra resources to police lower cod landings—including at Macduff—in the current year than you needed last year, when higher aggregate cod landings were permitted. I ask you to consider that.

I want to clarify the definition of “unused days” that appears in SSI 2003/56. The arithmetical definition is quite clear. However, I want to focus on vessels that are steaming without gear on

board. Would a vessel that was steaming without gear ever find that that time counted towards days at sea for the purposes of the SSI?

Ross Finnie: The paragraph to which Stewart Stevenson refers indicates that the word “days” relates to days in a designated area with gear. The obverse of that is that the answer to the member's question must be no.

Stewart Stevenson: So the clock would start ticking from the moment that a fishing vessel collected its gear from a non-fishing vessel stationed in an area, for example.

Ross Finnie: That raises an interesting question about what the person was doing when they left port. The question treads slightly on an evasion issue. Why would someone act as Stewart Stevenson describes?

Stewart Stevenson: I suggest the word avoidance.

Ross Finnie: Indeed. The matter would have to be decided by the facts on the day. A choice would have to be made. I must think carefully about the circumstances in which someone would act as the member has described. I understood Stewart Stevenson's initial question and follow where he has gone from there, but I cannot deal with the member's second point directly. Earlier, Donald Carmichael indicated that there might be more flexibility in the clock ticking from port. That might reduce the pressure on people to adopt a strategy of avoidance. A more flexible definition of when a day begins would be of assistance in that matter.

Stewart Stevenson: I am concerned that gear might be left at ports that are the shortest possible steaming time from the fishing grounds that are to be exploited. That could disadvantage Scottish ports in a variety of ways. An appropriately flexible interpretation of the regulations is necessary to avoid disadvantaging Scottish ports and hence Scottish onshore industries that are ancillary to fishing.

The Convener: Before we debate the motion, I would like the minister to clarify an answer that he gave to an earlier question from Irene Oldfather. If we are found to be infringing European legislation and are penalised financially for that, who will have to pay the penalty? Will it be paid from the UK budget or from the Scottish block grant? I think that you said that you supposed it would be paid from the Scottish block grant, but I am not absolutely clear about that.

Ross Finnie: If the infringement is a United Kingdom matter, the penalty will fall on the UK Treasury. However, if the Scottish Parliament is responsible for the breach, people will come to us in the first instance.

The Convener: We move now to debate the motion. Under parliamentary procedure, we are allowed 90 minutes for that, although I hope that we will not need all that time. I invite Richard Lochhead to speak to and move motion S1M-3967.

16:45

Richard Lochhead: I will be relatively brief, because we have discussed many of the issues, at this meeting and previously.

As I said earlier, it is unfortunate that we are taking a retrospective approach to the statutory instrument. The arrangements have been in place since 1 February, yet only now in March is the committee able to express its views. A motion of annulment is the only option that is open to a committee member to ensure a proper debate and an opportunity for the community to express a view, with the minister present for that debate.

I do not think it is right for the committee to endorse legislation that was, in effect, foisted upon Scotland at the fisheries council in December without notice, without consultation and without a great deal of thought having been given to it. The SSI is a draconian measure, and the Minister for Environment and Rural Development himself, Ross Finnie, has on numerous occasions referred to the measures as "crude". He has also referred to them as "inequitable" and "unfair". For that reason, we should not even contemplate endorsing this legislation.

Back in December last year, the industry was hoping for breathing space that would allow the science to be updated with regard to white-fish and other stocks, and allow the cod recovery plan to be put into place further down the line, but we ended up with a delay before the cod recovery plan could come forward. If everything goes according to plan, it will be in place in July. In the meantime, the draconian days-at-sea measures have been put in place.

What we have as a result is a dog's dinner, and the situation is causing problems and a huge amount of concern among fishing communities. As I will illustrate, that is unjust and has ramifications not only for the white-fish fleet but for other parts of the catching sector and for the onshore sector. There is a huge issue around the measures, which will have ramifications throughout our fishing communities and the fishing industry.

The measures are unjust, because the white-fish fleet in Scotland, which uses the biggest mesh in the North sea, gets the fewest fishing days per month. Furthermore, our white-fish fleet has had imposed on it cod recovery measures that couple management of cod with management of other white-fish stocks. Other countries that fish the

North sea—and, indeed, that fish the Scottish fishing grounds—have managed to decouple those stocks from the management of cod.

We have been left with regulations that are, as many of us have said today, dangerous. We do not have a guarantee at present. We have not even seen the Commission's draft amendments to the days-at-sea regulations that would allow our fishermen to operate in a safe environment at sea. We know that there have been a number of times over the past few weeks when fishermen have felt obliged to stay at sea in bad weather because they would otherwise have had their allocated days infringed.

The days-at-sea legislation that is under discussion is ill thought out—it is a dog's dinner. There was absolutely no consultation of the fishing industry before the measures were imposed upon Scotland by Europe. The regulations may well end up being in place until the end of the year; that is legally possible if we approve the measures today and it would be the most unfortunate outcome for the Scottish fishing industry and our fishing communities. I do not think that we in Scotland should merely accept everything that Europe throws at us, especially given that the regulations will be so disastrous for our fishing communities. Please support my motion. The last thing the committee wants to do is to endorse the legislation before us.

I move,

That the Rural Development Committee recommends that nothing further be done under the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003 (SSI 2003/56).

The Convener: I invite the minister to respond, after which we will have an open debate.

Ross Finnie: Two separate matters arise from Richard Lochhead's remarks. Much of what he says is directed at a debate on how we arrived at our conclusions at the Council of Ministers in December. That is not quite the issue that is before us now, however. This is not the time or the place for us to rehearse an argument that was effectively concluded at the December council. We have to consider carefully what is a most difficult and awkward choice—I agree with Richard Lochhead to that extent. We accept or leave ourselves open to either failing to implement the European legislation or—perhaps even worse—to its being requested that we continue to implement the European directive as it stands, which is capable of being enforced without being translated into domestic legislation.

We have stated clearly to the Commission that we seek further amendment on key areas. On the bad side, I hope that the regulation will not remain as it stands until December. However, if it does, I

would prefer that our fishermen had the opportunity, which the regulation provides, to have a two-month rather than a one-month effort management period. I also hope that the fishermen will have a transfer of days from one management period to the next. They should also have a transfer of vessels to facilitate efficient and viable operations throughout the fleet. Crucially, there should be procedures for fishermen to make representations on and appeal against decisions that relate to the reduction of fishing days as required by annexe XVII. Not all of those options are open to them under the Council regulation, but they are available through the instrument.

I acknowledge that the choice is difficult. However, the matter is about difficult choices; the measures are not simple and I appeal to the committee to recognise the legal obligations. The committee should also recognise that, if the argument is balanced, we require that careful consideration be given to our message to the European Commission about our desire to extract from it considerable changes and, indeed, a revised regime. I do not believe that we would be giving the right message by annulling the instrument today.

Mr Rumbles: I wish to oppose Richard Lochhead's motion. It will be the height of irresponsibility to follow the course of action that he has suggested. Paragraph 3.1 of the regulatory impact assessment states:

"Member states have a legal obligation to implement and enforce the measures."

Whatever we think of the UK member-state negotiations with the European Council, the fact is that they took place. The restrictions were the result of the negotiations, whether or not we agree with them. As far as I am concerned, whether we think it could have been handled better or worse is not the issue.

The question is simple: should we flout EU regulations, as Richard Lochhead proposes? If the committee decides to follow Richard Lochhead's route, there will be a crisis. The fishing industry will be thrown into further crisis, but more important, it would throw us into a constitutional crisis. In my view, that is what is behind Richard Lochhead's motion. We would have a constitutional crisis because Richard Lochhead would have us throw out the regulations on the ground that if the Scottish Parliament threw them out, the UK Government would have no option but to step in and use Westminster's powers to override the Scottish Parliament. The issue would then grow and take on far greater proportions than we would have thought it could. I am not impressed by Richard Lochhead's arguments. He is using party political rhetoric to get us into a position that will cause a constitutional crisis. It is clear that

negotiations have taken place with member states and that we are where we are.

The minister said that it was unfortunate that Richard Lochhead lodged his motion. In fact, the minister acknowledged that Richard had little option but to lodge the motion if he wanted a debate, which is absolutely true. However, before the debate took place, we had 34 minutes of questions to the minister, and Richard Lochhead managed to ask many questions of the minister and his officials. It was quite important for him to do that, but that was the committee's opportunity to discuss the matter. In fact, there is a debate in the Parliament tomorrow about the subject. I feel very angry that Richard Lochhead has used the committee to lodge his motion. By doing so, he is trying to politicise the issue even more and make it into some sort of constitutional crisis. I will certainly not support the motion, and I hope that other members will not do so either.

Stewart Stevenson: I shall withhold my support from the order for a number of reasons, the first of which is absolutely nothing to do with party politics and everything to do with the vital interests of people in my parliamentary constituency. I asked the minister about the position of Macduff, where 200 jobs might be under threat if trawlers have to divert from the town to land their catches at Fraserburgh and/or Peterhead. Both ports have maintenance facilities that fishermen will inevitably use in preference to Macduff, where they have previously landed their catches. If for that reason only, my constituents would expect absolutely no less of me than to withhold support from the order.

My second reason for withholding support is based simply on the evidence of the detailed construction of the orders. I will focus on one aspect—the powers of sea fishery officers—because it is possible to see how different expressions of the same principle across the various orders indicate a measure of haste, imprecision and risk in their drafting. I probably have not found all the references in that respect, but article 14 in the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003 (SSI 2003/56) contains a definition of where a fishery officer may exercise his or her powers, whereas article 16 contains a second—and different—definition of where those powers may be exercised in relation to "fish and fishing gear". Furthermore, in the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2003 (SSI 2003/79), the definition in article 4 of sea fishery officers' powers in relation to fishing boats differs again. I should also point out that there is a reference to "any relevant ... fishing boat" for reasons that might not be clear. Finally, the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2003 (SSI 2003/88) contains yet another variation in the definition of

such powers in article 7 and of powers in relation to “fish and fishing gear” in article 9.

All those examples—and possibly the exclusion of Macduff—indicate haste. I was not at all convinced that the town’s exclusion this year under the new arrangements was justified on the basis of additional effort; indeed, there is less effort. For those reasons, I will withhold my support from the order to which Richard Lochhead’s amendment refers.

Rhoda Grant: When Richard Lochhead claimed earlier that he had lodged the motion to allow us to have a debate, I disagreed. After all, we often have questions about SSIs and the minister has never refused to come before us to answer them. However, I realised that Richard might be indulging in some political posturing and felt that that would be okay because he would not force the matter to a vote. At best, what he is doing would remove an appeals procedure from our fishing communities and would at worst leave us open to even more draconian measures than those that we face at the moment. Furthermore, he is asking Parliament to act illegally. I cannot believe that he is doing that. As a result, I ask him to seek to withdraw the motion, because it puts us all in an extremely difficult position. By agreeing to it we would not be supporting our fishing communities and, indeed, we would be sending the wrong signals to Europe.

Mr McGrigor: For once, I do not believe that Richard Lochhead is indulging in political posturing. Mike Rumbles mentioned a “constitutional crisis”, but that would not mean much to people in Shetland, Fraserburgh and Peterhead because we are talking here about a fishing crisis, rather than a constitutional crisis. It is entirely wrong that the days-at-sea scheme—which is, after all, part of Mr Fischler’s obsession with the cod-recovery plan that is bringing the Scottish fishing industry to its knees—should be supported by Parliament. Why do not we ask Mr Fischler what has happened to the hake-recovery plan that seems to have disappeared from the agenda? There was also to be a moratorium on hake.

17:00

The days-at-sea scheme is unnecessary because of the enormous quota cuts. If 100 vessels decommission in this round, that will be equivalent to a loss of 900 days at sea to Scotland’s fishing industry under the terms of the deal that was done. We have already given up 900 days at sea. The scheme compromises the safety of vessels and changes the complexion of the whole white-fish fishing industry. We have no idea how long the scheme will last; it is hoped that the measures will not last beyond July, but I have my

doubts. If one takes the fact that that would be a five-month period, two does not go into five, just as nine does not go into 15. February and March make two; April and May make two; and June is on its own. The fishermen will lose out on the two-month scenario on one of those combinations of months. For that reason, I would find it extraordinarily hard to support any days-at-sea scheme of this kind.

Mr Morrison: I begin by applauding Richard Lochhead; he has, at least, demonstrated an element of consistency in that he has been consistently irresponsible. None of us will forget his infantile posturing on the streets of Brussels while the two ministers tried to secure a good deal for Scotland and for the UK. He has consistently undermined the genuine steps and efforts that have been undertaken on behalf of our fishing communities. Today, he has again demonstrated beautifully his failure to understand the most basic of simple facts and has flown in the face of the indisputable facts that have been presented by officials and Ross Finnie this afternoon. It is not often that I find myself in agreement with Mike Rumbles, but I agree that his doing so was tawdry and purely partisan—the worst type of low-grade politics. Is it any wonder that the youngest political party in Scotland is targeting Richard Lochhead’s constituency? His conduct is irresponsible in the extreme, and it is for purely political reasons. He certainly does not have in mind the best interests of the fishing communities.

Fergus Ewing: I think the combination of decommissioning and restriction of effort is an extraordinarily crude approach to preserving cod stocks. It has been tried and failed off Grand banks, Newfoundland, where 10 years after a ban on fishing, cod still has not recovered. The combination also compromises safety, as the minister has acknowledged, although I did not get the sense from the minister that the Commissioner has acknowledged that—Mr Fischler really must express an opinion on that before it is too late.

Science underlies the measures and when he was here recently, Mr Elliot Morley wrongly imputed that we were intent on ignoring scientific evidence—an extraordinarily puerile allegation that is completely untrue. Tony Hawkins, former director of Fisheries Research Services, said in Aberdeen on 11 February that the science in relation to the separation of stocks is “poor and uncertain”. Therefore, we rely to an extent on evidence that is by necessity “poor and uncertain”. That is the verdict of the man who used to work for the minister.

I turn to specific points on the unfortunate statutory instrument. I wonder whether the regulations could have been set out differently because, as they are, the onus is placed on

skippers to prove that they are not committing a crime. It is assumed that they will have been committing a crime unless they can prove certain factual circumstances in their defence. That is a pretty punitive approach, and I wonder whether it is strictly necessary.

Margaret Ewing referred to the huge powers that fisheries officers will have; that has been commented on already. Irene Oldfather asked the sensible question what would be the consequence if the order were annulled. I notice that the minister did not respond by saying that an automatic infraction would result; rather, he said that annulment might in theory lead ultimately to that. That is entirely different from what has been represented. I know that if the minister seriously believed that the consequence of annulment of the order was automatic infraction, he would have advanced that clearly, but that was not the form of words that he used in responding to questions.

In any event, given that the minister has indicated that there have been four additional attempts to ameliorate the harsh and oppressive results of the measure—two months rather than one month, the ability for vessels to carry forward up to 20 per cent, the transfer of days from one vessel to another, and the appeal process—we do not need to be a rubber stamp. Those changes also demonstrate that other measures could have been taken to ameliorate the measures—measures which have been remarked on by other members in the debate. For all those reasons, it would not be correct to endorse the statutory instrument.

I finish by saying that members who have chosen in their remarks to personalise the issue and to attack members in the way that they have demean themselves. I suggest that they should cease playing the man and start playing the ball in future.

The Convener: Before I ask Richard Lochhead to wind up, it is only right to give the minister the opportunity to answer the—*[Interruption.]* I apologise, Irene. Minister, I must keep you in suspense a moment longer.

Irene Oldfather: I will make my remarks brief. Parliament has a responsibility—which is discharged by my own European Committee—to examine the transposition of legislation from the European Union into Scottish and UK law. We take that responsibility seriously, and I can assure the committee that where there is late transposition or non-transposition, we hold the Executive to account. That is why I was interested to hear the minister's response to the four questions. It is clear to me that we have a legal obligation, that we will be open to infraction proceedings if we do not transpose the legislation—I disagree with Fergus Ewing on

that—and that financial penalties will be imposed. It is also my understanding, which was confirmed by the minister, that any fine that might be imposed upon us would be paid out of the Scottish grant. We must regard that seriously. On that basis, I cannot vote for Richard Lochhead's motion.

The Convener: I apologise for nearly missing you out, Irene. I am intrigued by your reference to your own committee. The thought of this being "my own" committee is one that fills me with horror. Nonetheless, I am fond of the committee. Before I ask Richard Lochhead to wind up, I give the minister an opportunity to address the many points that have been put during the debate.

Ross Finnie: Most of the arguments have been well rehearsed, but I will make one or two quick points. First, I am bound to say that it is not for me to determine whether, should the committee annul the instrument, the European Commission will commence infraction proceedings at 5 o'clock tonight or at any other time. That is a matter for the European Commission, therefore my remarks as a Scottish minister cannot be construed as indicating whether or when the Commission will proceed in that way. The fact is that we would be in breach of law, as Irene Oldfather just said.

Secondly, on the further exemptions that we have introduced into SSI 2003/56, which are not in the regulation, I say to Fergus Ewing that I do not believe that there is a variety of approaches. We are somewhat constrained in how we can interpret the legislation, but we have interpreted it as flexibly as we can. I remind all members that the four additional flexibilities will not exist if the instrument is annulled.

Notwithstanding the fact that we can rehearse the December debate again and again and again, we have to decide today whether, in these extraordinarily difficult circumstances, our fishermen would be better operating under the regulation as it is, or whether they would be better operating under the instrument as transposed into domestic legislation, with the additional flexibilities. I submit humbly to the committee that it would be much better for our fishermen to have the advantage of that domestic translation.

The Convener: Thank you. I ask Richard Lochhead to wind up on the motion in his name, and to indicate whether he wishes to press or withdraw his motion.

Richard Lochhead: It is always a thrill to listen to Alasdair Morrison's pro-Richard Lochhead speeches. He must be the only politician on the Government benches who consistently blames the Opposition spokesperson for a crisis facing a key Scottish industry.

The thrust of all my comments in the debate has been that the committee should not, for the reasons that I outlined in my introductory remarks, endorse the legislation. Parliament and the committee should not give a damn what Europe thinks because, quite clearly, Europe—in the form of the European Commission and Franz Fischler—does not give a damn what the Parliament or Scotland thinks. On that note, I press my motion, in order that the committee can vote and express a view.

The Convener: The question is, that motion S1M-3967, in the name of Richard Lochhead, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

AGAINST

Grant, Rhoda (Highlands and Islands) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Oldfather, Irene (Cunninghame South) (Lab)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)

ABSTENTIONS

Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Lochhead, Richard (North-East Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)

The Convener: The result of the division is: For 0, Against 6, Abstentions 5.

Motion disagreed to.

The Convener: I thank the minister and his officials for attending, and invite them to withdraw.

Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2003 (SSI 2003/66)

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2003 (SSI 2003/79)

Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2003 (SSI 2003/88)

The Convener: The last item on our agenda is consideration of—[*Interruption.*] Could we have a little attention, please? The last item on our agenda is consideration of three instruments, which we are considering under the negative procedure—the Sea Fishing (Restriction on Days at Sea) (Scotland) Amendment Order 2003 (SSI 2003/66), the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2003 (SSI 2003/79), and the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2003 (SSI 2003/88).

The Subordinate Legislation Committee reported on all the instruments and had comments to make on SSI 2003/66 and SSI 2003/79, extracts of which members have received. No members have indicated to me or to the clerks that they wish to raise any policy questions on the instruments. Do any members wish to comment? If not, can I assume that members are content with the instruments, and that the committee is happy to make no recommendation to the Parliament?

Members indicated agreement.

The Convener: I point out before closing the meeting that there will be no committee meeting next week. Our next meeting will be on the afternoon of 18 March, at a time to be confirmed. That meeting might be a little later than usual, because we have to share committee room 1 with another committee on that date, would you believe. I hope that we will start at about 3 o'clock, but that is to be confirmed. Among other items on that agenda, we must consider our draft annual report. Are members content for that item to be considered in private?

Members indicated agreement.

The Convener: I thank everybody for attending.

Meeting closed at 17:13.

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