

MEETING OF THE PARLIAMENT

Wednesday 26 April 2000
(*Afternoon*)

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26 April 2000

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26 April 2000

Scottish Parliament

Wednesday 26 April 2000

(Afternoon)

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

Time for Reflection

The Presiding Officer (Sir David Steel): We welcome Ian Baillie of the Royal National Mission to Deep Sea Fishermen to lead our time for reflection today.

Ian Baillie (Royal National Mission to Deep Sea Fishermen): Good afternoon.

Others went out on the sea in ships; they were merchants on the mighty waters. They saw the works of the Lord and his wonderful deeds in the deep, for he spoke and stirred up a tempest that lifted high the waves. They mounted up to the heavens and went down to the depths. In their peril their courage melted away. Then they cried out to the Lord in their trouble and he brought them out of their distress. He stilled the storm to a whisper and the waves of the sea were hushed. They were glad when it grew calm and he guided them to their desired haven.

Jesus calmed the storm when he was in the boat with the fishermen. We have the guidance of the Parliament in our country's calm times and its restless times. In our times of trouble and distress we all look for a safe haven, which we might find in our particular faith, in our family or in some special part of Scotland. From Mallaig to Scrabster; in Stornoway and Lerwick on the islands; and from Aberdeen to Eyemouth, the fishermen's mission offers such a haven in its centres and through its network of staff across the country.

The fishermen's mission has been caring for fishermen and their families and communities for more than a century. It gives financial, practical and spiritual help to shipwrecked, sick, distressed, disabled, retired and sea-going fishermen and to their wives, widows and children, irrespective of their creed or race.

In the first month of the new millennium, nine men were killed, nine vessels lost and 56 men rescued. Fishing is our most dangerous industry and has been a major source of employment in Scotland for many years. As a representative of the mission and of our country's fishermen I am honoured to share these thoughts with the Parliament. Let us pray.

The Lord is my pilot; I shall not drift
He lights me across the dark waters;
He steers me in deep channels,
He keeps my log;
He guides me by the star of holiness
For his name's sake.
Even though I sail 'mid the thunders and tempests of life,
I will dread no danger; for You are near me;
Your love and your care they shelter me;
You prepare a harbour before me in the homeland of eternity:
You anoint the waves with oil so my ship rides calmly.
Surely sunlight and starlight will favour me on the voyage I take;
And I will rest in the port of my God forever.
Amen.

The Presiding Officer: Before we start this afternoon's business, in order to allay rumour, I should like to make it clear that the First Minister phoned me this morning, and he will be taking questions as normal tomorrow. [*Applause.*]

Motion without notice

14:33

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am most grateful for the opportunity to move, under rule 8.2.6, that motion S1M-778, on the assisted areas map, be taken at 4.15 pm without notice.

I am indebted to the Presiding Officer for indicating that it is accepted that the matter meets the stringent criteria that govern such motions without notice.

The Presiding Officer (Sir David Steel): That is correct. I have decided to accept the motion, which means that the Parliament itself will decide whether to debate that matter later this afternoon. Mr Ewing may introduce his motion now, in two minutes, and I will call Alasdair Morrison to respond for the Executive.

Fergus Ewing: I am obliged, Presiding Officer. There are four reasons why the motion should be moved without notice—as is customary—and I apologise for any lack of courtesy and for any inconvenience that members have suffered in giving up other commitments to come here today.

First, I make no apology for arguing that the future lives and livelihoods of thousands of people in the Highlands and Islands will be at stake if the areas that were removed from the initial map—as submitted to the European Commission—are not reinstated. This comes at a time when more than 2,500 people are about to be made redundant at BARMAC. In proportionate terms, that is the biggest redundancy in the United Kingdom—the matter is vital to the Highlands and Islands.

Secondly, I was delighted yesterday to be able to secure all-party support for the motion. I was pleased to receive support from Mary Scanlon of the Conservatives, John Farquhar Munro of the Liberal Democrats and Maureen Macmillan of the Labour party. I believe that that cross-party approach—which I also pursued with the Westminster MP, David Stewart, in a joint press statement last week—is not only expected of all elected representatives in the Highlands, but is the approach that we were elected to pursue when that is appropriate. We were elected to pursue a common approach—albeit with robust arguments—but, none the less, in pursuit of a shared aim.

Thirdly, it has not been possible to introduce the matter before today. The announcement of the exclusion of Inverness, Nairn, Moray, and Badenoch and Strathspey from the assisted areas map as proposed to the European Commission,

was made during the recess.

Fourthly, this is an emergency in the sense that the consultation period, although it was announced during the recess, will conclude next Tuesday, on 2 May. Today, therefore, is the only opportunity for members of our Parliament to influence the consultation process. If the Parliament means anything, it means that members from all parties, who have expressed support for the motion, should have an opportunity to debate the subject, which is detailed and complicated, but which is, however, absolutely crucial to the lives and livelihoods of thousands of people throughout the Highlands and Islands.

I move,

That motion S1M-778 be taken at this meeting of the Parliament.

14:37

The Deputy Minister for Highlands and Islands and Gaelic (Mr Alasdair Morrison): As Fergus Ewing outlined, the new assisted areas map proposals were announced by the Government on 10 April. This matter is reserved, but even the UK Government does not have full discretion in designating assisted areas, which must be approved by the European Commission.

As part of the proposals that were published in July 1999, all the Highlands and Islands area was put forward for inclusion on the basis of its overall population sparsity. However, the Commission would not accept inclusion of the whole area on that basis, and the Inverness area does not qualify as sparsely populated.

Mr Ewing referred to a period of consultation. There is such a period, which runs until 2 May, during which interested parties are invited to submit views on the revised proposals. A number of Highlands interests have already made representations and their views will be taken into account as part of the consultation process. Indeed, discussions about the proposals that were announced on 10 April took place last week between the chief executive of Highlands and Islands Enterprise and the senior official who leads the Scottish side of the assisted areas map review. I understand that further such discussions are likely.

Tricia Marwick (Mid Scotland and Fife) (SNP): On a point of order, Presiding Officer.

Mr Morrison: The Highlands and Islands still does well out of the revised map proposals. Even with the proposed omission of the areas around Inverness, Highlands and Islands Enterprise has some 72 per cent population cover, compared with—

The Presiding Officer: Hang on. We have a

point of order.

Tricia Marwick: I understood that the minister's response would be concerned with whether we should have the debate. Instead, he is entering into a debate—

The Presiding Officer: The member is correct. I am listening carefully to what the minister is saying, but he must stick to the point of whether we debate the motion this afternoon.

Mr Morrison: As I was saying, even with the proposed omission of the areas around Inverness, HIE has some 72 per cent population cover, compared with 48 per cent for Scotland as a whole and 29 per cent for the whole of the UK.

In response to some of Mr Ewing's points, as he well knows—or, in any case, he should—the revised proposals include the Ardersier area, which will clearly be a priority for local interests. *[Interruption.]*

The Presiding Officer: Order. I am listening carefully. *[Interruption.]*

Tricia Marwick: On a point of order.

The Presiding Officer: If it is the same point of order, I am seized of it, and I ask the minister to return to whether we debate this afternoon the question that he is talking about.

Mr Morrison: I am grateful for your guidance. I was under the impression that I was to respond to some of Mr Ewing's points.

The Presiding Officer: No. We cannot debate the merits of motion S1M-778 now. We can debate only whether we hold a debate this afternoon. That is the issue to which the minister is responding.

The Minister for Parliament (Mr Tom McCabe): On a point of order, Presiding Officer. I appreciate that advice, but it was perhaps rather late. The same words would have been helpful in instructing Mr Ewing about what he could not say.

The Presiding Officer: This is a new procedure. I am listening carefully to both speeches, which are supposed to relate to whether we need to debate the issue this afternoon. Mr Ewing put the case as to why he thought that it should be debated this afternoon. The minister either agrees or disagrees with him, but that is what he should stick to.

Mr Morrison: I intend to use my three minutes, at the end of which I will make clear the Executive's position.

Mr Ewing wrote to Mr McLeish, seeking a meeting about the assisted areas map proposals, and I can confirm that Henry McLeish will, of course, meet him and other colleagues from the

Highlands and Islands.

An oral parliamentary question on the assisted areas map has been lodged, which is to be answered tomorrow. Fergus Ewing could, of course, have raised the matter in his capacity as a member of the Enterprise and Lifelong Learning Committee, rather than seeking an emergency debate today. I ask Parliament to reject Mr Ewing's motion.

The Presiding Officer: We must come to an immediate decision on the matter.

The question is, that the motion in the name of Fergus Ewing, that motion S1M-778 be taken at this meeting of the Parliament, be agreed to. Are we all agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

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 Aitken, Bill (Glasgow) (Con)
 Brown, Robert (Glasgow) (LD)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
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 MacDonald, Ms Margo (Lothians) (SNP)
 Macmillan, Maureen (Highlands and Islands) (Lab)
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 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
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 Salmond, Mr Alex (Banff and Buchan) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sturgeon, Nicola (Glasgow) (SNP)

Swinney, Mr John (North Tayside) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 MacLean, Kate (Dundee West) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)

Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 54, Against 61, Abstentions 0.

Motion disagreed to.

Scottish Adjacent Waters Boundaries Order 1999

The Presiding Officer (Sir David Steel): As there is no ministerial statement today, we move straight to the debate on motion S1M-752, in the name of Alex Johnstone, on behalf of the Rural Affairs Committee, on the impact of the Scottish Adjacent Waters Boundaries Order 1999. I ask members who wish to speak in the debate to press their request buttons now.

Dr Winnie Ewing (Highlands and Islands) (SNP): On a point of order, Presiding Officer. I wish simply to ask why you rejected the three amendments to motion S1M-752, as I know of nothing in the standing orders to prevent an amendment being taken. This matter is of enormous importance to the public, who will be wondering why this Parliament, once again, does not seem to get the opportunity to put its view.

The Presiding Officer: Dr Ewing is a very senior member of this Parliament and she should know that the chair does not give reasons why amendments are not selected. In fact, there were two, not three, amendments—one from the SNP, the other from the Executive.

This is also a new procedure—I think that this is the first time that we have held a committee debate on a take-note motion. While I do not give reasons, I did not think that either amendment was appropriate.

I call Alex Johnstone to open the debate.

Michael Russell (South of Scotland) (SNP): On a point of order. I presume that that ruling does not indicate that you would never entertain amendments to a take-note motion, in case your ruling was so interpreted.

The Presiding Officer: Mr Churchill once wisely said that the word “never” should be used only in general relativity to the subject.

Michael Russell: So does “never” mean “not ever”?

The Presiding Officer: No. “Never” means “not now”.

14:44

Alex Johnstone (North-East Scotland) (Con): Thank you, Presiding Officer. I now know how it feels to be involved in the series of false starts that one often sees in sprint races, although I suspect that my speech will not be too much like a sprint.

It is my pleasure to move and speak to a motion on behalf of the Rural Affairs Committee. Before I speak directly to the motion, it is only fair that I

take an early opportunity to say a few words about the committee and how it operates.

It has been a great pleasure, in the first year of this Parliament, to be convener of the Rural Affairs Committee, particularly because of the way in which committee members have worked together and how that has largely allowed political divisions to disappear when we have discussed issues that are important for Scotland’s fisheries and rural communities.

There is a strong tendency among the committee’s members to leave their political cloaks at the door. That has happened on almost every subject that we have discussed—with the possible exception of the impact of the Scottish Adjacent Waters Boundaries Order 1999 which, as it happens, is the issue on which the motion that I have lodged is based.

The committee found that it had divisions on this matter during the preparation of its report and even during the decision whether to progress with today’s motion. It is appropriate that I should bring that fact to the Parliament’s attention, given that it is always important for members of the committee to be allowed to have their views on particular issues. It was important that those views were taken into account during the preparation of our report.

The motion is:

“That the Parliament notes the terms of the report by the Rural Affairs Committee, The impact of the Scottish Adjacent Waters Boundaries Order 1999 (SP paper 42), in particular its dissatisfaction and concern about the level of consultation carried out prior to the introduction of the boundaries order, that the introduction of a boundaries order appears not to have identified any inconsistency with the Civil Jurisdiction (Offshore Activities) Order 1987, and that the amount of fishing activity in the disputed area does not appear to have influenced the Order, and further notes the Committee’s recommendation that the Secretary of State for Scotland should either introduce a new, revised Order, or support a Bill calling for a revised boundary proposed in the House of Commons by Archy Kirkwood MP.”

This issue goes back some time and, as I am sure members will all remember, we debated it at some length on 3 June last year. That day, members eventually approved a motion amended, if I remember correctly, by Euan Robson. It was:

“That the Parliament notes that — the Scottish Adjacent Waters Boundaries Order (S.I.1999/1126) in no way alters or restricts the freedom of the Scottish fleet to fish consistently with the Common Fisheries Policy of the European Union; from 1 July the Parliament will be charged with the responsibility of regulating fishing in the newly created Scottish zone of British Fishery Limits and fishing by all Scottish vessels no matter where they fish; consultation will be required with relevant bodies in the preparation of legislation relating to fishing in the Scottish zone and the Scottish fishing organisations have considerable concerns about the said Order; and calls upon the relevant Minister to (a) meet representatives of the

Scottish fishing industry to discuss their concern and in particular their desire to re-establish the custom and practice of former years in regard to the east coast boundary and (b) convey such concerns to the Secretary of State for Scotland.”—[*Official Report*, 3 June 1999; Vol 1, c 258.]

On 5 October 1999, the Rural Affairs Committee considered a letter from the Scottish Executive rural affairs department which explained the outcome of those consultations. In the light of that letter, the committee took evidence on 2 November 1999 from Hamish Morrison of the Scottish Fishermen’s Federation and the Deputy Minister for Rural Affairs, John Home Robertson, on their reaction to the consultation.

On 9 November, the position was set out in a written answer received by Richard Lochhead, a member of the Rural Affairs Committee. The question that he asked was:

“To ask the Scottish Executive whether it has made representations on behalf of the fishing industry to Her Majesty’s Government in relation to the Scottish Waters Adjacent Boundary Order 1999 and, if so, when they were made, to whom, and whether any response has been received.”

The answer he received from John Home Robertson was:

“I have, as promised in the debate, written to the Minister of the Crown on these matters. The outcome of this correspondence, and any ancillary consultations, will be made known to the Parliament when they are concluded.”—[*Official Report, Written Answers*, 9 November 1999; Vol 3, p 78.]

The report contains the committee’s assessment of the evidence that was subsequently presented. It does not seek to reiterate all the arguments that were put forward in the debate on 3 June last year, but follows up the key outstanding issues that were raised then. The committee takes seriously the disappointment that the Scottish Fishermen’s Federation continues to express. It has been argued that a resolution of this problem—or even a decision that is more widely accepted—could help to restore confidence among the fishing community. The persistent concerns of the fishing industry that the committee accepts should be addressed are the level of consultation that was carried out prior to the introduction of the boundaries order and the scope for confusion that was created by the choice of boundary that was made.

The committee heard evidence about the implementation of the consultative process prior to the introduction of the order. The chief executive of the Scottish Fishermen’s Federation, Hamish Morrison, said that in his view:

“There was no consultation before the event, nor was there any explanation after it. Fishermen and their representatives, myself included, discovered entirely by accident that this measure had been enacted.”

Mr Home Robertson, the minister responsible for fisheries, referred to a press release issued on 8 March 1999 announcing the proposed boundary prior to its consideration in the House of Commons. He had been assured that a copy of that press release had been sent to the Scottish Fishermen’s Federation, but accepted that

“issuing a press release is not always the best way of getting things into the public domain.”—[*Official Report, Rural Affairs Committee*, 2 November 1999; c 176-78.]

The Deputy Minister for Rural Affairs (Mr John Home Robertson): There was sarcasm there.

Alex Johnstone: The minister acknowledged that he

“would have liked much more proactive consultation about the designation of the new boundary when it happened”.—[*Official Report, Rural Affairs Committee*, 2 November 1999; c 197.]

The committee accepts that the processes leading up to devolution may have affected the preparation and the publication of the order. In particular, the committee is concerned by two matters that may have resulted from lack of consultation. First, when the boundary order was introduced, no inconsistency with the Civil Jurisdiction (Offshore Activities) Order 1987 appears to have been identified. Secondly, the amount of fishing activity in the disputed area does not appear to have influenced the order. That became clear during evidence taking on 2 November, when Irene McGugan asked:

“Were records checked, to determine who fished mostly in the disputed area—whether Scottish or English vessels?”

The minister replied:

“We lack information on that. There has been light policing of that territory, and there is precious little evidence of boardings or sightings of vessels from any country in that area. We do not have detailed information on that.”—[*Official Report, Rural Affairs Committee*, 2 November 1999; c 195.]

The Scottish Fishermen’s Federation subsequently provided information that it had received from the Scottish Fisheries Protection Agency on 3 June 1999, showing boardings and sightings of Scottish vessels between April 1996 and March 1999 in the vicinity of the median line. It is the committee’s opinion that, had that information been available earlier, it might have influenced the discussion on the order.

One issue that we decided to include in the report was the scope for confusion created by the order. In his evidence, the minister sought to steer debate away from the sensational comment about winning or losing specific amounts of sea area and explained that this is a new boundary where there has been no boundary previously. The committee accepts the need for a definition of Scottish and

English areas of the North sea for fishing purposes, on the basis that the operational patrolling limit of the Scottish Fisheries Protection Agency had no legal significance. That patrolling boundary has been quoted as the boundary of custom and repute.

Reference has already been made to the existence of another boundary between Scottish and English waters, which was established by the Civil Jurisdiction (Offshore Activities) Order 1987 for the purposes of the Continental Shelf Act 1964. Within the territorial waters—up to the 12-mile limit—the two boundaries are close but are separated by a distance of 0.09 km. That means that, out to the 12-mile limit, there is an area—not exactly a gap—in which the boundaries do not agree.

That brings me to my next point. I mentioned the scope for confusion. The area between the boundaries has not only confused the issue, but confused the committee. Examples of that were highlighted during the preparation of the report, such as the problem of Scottish boats operating between the two boundaries being under Scots law if they are undertaking oil contract work and under English law if they are fishing in the disputed zone. To emphasise that confusion, the report gets those two positions the wrong way round. I ask the minister to acknowledge that correction.

John Home Robertson argued that the potential for confusion over oil-related work was hypothetical. He advised that there are three decommissioned oil installations in the area, which have been cleared as safe for normal commercial fishing, and that two further oil installations will be disposed of in the same way. The committee believes that the existence of two different boundaries between Scottish and English waters in the North sea could lead to confusion, as I have explained.

On what solution might be recommended, some members of the committee felt that we should not follow the same course as the House of Commons committee, which considered the matter by seeking to define a boundary line without adequate consultation. The Scottish Fishermen's Federation has pointed out that the newly adopted median line runs straight through the Berwick bank fishing ground and it has warned of the possibility of fishing regulations being varied, at some point in the future, across the Scottish/English boundary in that vicinity. The minister has assured the committee that the present Administration would not seek to make any regulations that differ from those that exist on the other side of the boundary, but the possibility remains that, with the devolution of fisheries powers, we may in future create different regimes on either side of that boundary.

On the balance of evidence that it has received, the committee has decided that a fishing boundary through the Berwick bank fishing ground is inappropriate, and recommends that the line that is defined by the Civil Jurisdiction (Offshore Activities) Order 1987 be adopted for the purpose of defining adjacent waters and the Scottish fishing zone.

The Scottish Adjacent Waters Boundaries Order 1999 has other potential impacts. There has been some confusion and misunderstanding. One of the principal arguments for taking no action on the fishermen's concerns was that the imposition of the boundary would pose no advantage or disadvantage to fishermen. It was generally understood that fishermen were the only people who would be affected. In the debate in Parliament on 3 June, the Minister for Rural Affairs—Ross Finnie—said that

"the fact is that the order relates only to fisheries."—[*Official Report*, 3 June 1999; Vol 1, c 228.]

However, in the House of Commons Third Standing Committee on Delegated Legislation, on 23 March 1999, the Minister for Home Affairs and Devolution—Mr McLeish—said that:

"The boundary, however, does have potential significance in relation to other matters that are devolved, notably within the UK territorial sea."

He also said:

"The boundary that is specified in this draft order does not automatically apply to such functions".—[*Official Report, House of Commons, Third Standing Committee on Delegated Legislation*, 23 March 1999; c 5.]

The committee has subsequently examined the full implications of the order in more detail and is now of the opinion that, contrary to the previous understanding, the Scottish Adjacent Waters Boundaries Order 1999 may have consequences for other legislation, beyond that affecting fishing. The order contains two distinct definitions of boundaries. Article 3 sets the boundaries for internal waters and the territorial sea; article 4 sets the boundaries for the sea within the British fisheries limits.

Section 126 of the Scotland Act 1998 interprets the word "Scotland" as including so much of the internal waters and territorial sea of the United Kingdom as is adjacent to Scotland. The boundaries of Scotland are therefore partly set by this order, which means that other legislation relying upon that definition of Scotland—such as the Food Safety Act 1990 and the Food and Environment Protection Act 1985—might already be affected by the boundary.

The new advice raises matters that are outwith the responsibility of the Rural Affairs Committee but which might be of interest to Parliament. Furthermore, it highlights the fact that, as the

impact of the order might not be confined to the fishing industry, a decision on whether the matter should be re-examined should not depend only on the question of advantage or disadvantage to fishermen.

Although the committee accepted that the resolution of this issue is reserved to the UK Parliament, it was united in wishing to make known its dissatisfaction with the present situation. As for how to overcome the problem, the committee recommends that the Secretary of State for Scotland introduce a new, revised order that adopts a line defined by the Civil Jurisdiction (Offshore Activities) Order 1987 for the purposes of defining both the adjacent waters and the Scottish fisheries zone. The committee also noted that it is open to the Government to support a bill calling for a revised boundary that will be proposed in the House of Commons by Archy Kirkwood.

That is an explanation—in reasonable time—of why the committee came to its decision. All of its concerns have been included in the motion before Parliament; I commend the motion to the chamber.

I move,

That the Parliament notes the terms of the report by the Rural Affairs Committee, *The Impact of the Scottish Adjacent Waters Boundaries Order 1999* (SP paper 42), in particular its dissatisfaction and concern about the level of consultation carried out prior to the introduction of the boundaries order, that the introduction of a boundaries order appears not to have identified any inconsistency with the Civil Jurisdiction (Offshore Activities) Order 1987, and that the amount of fishing activity in the disputed area does not appear to have influenced the Order, and further notes the Committee's recommendation that the Secretary of State for Scotland should either introduce a new, revised Order, or support a Bill calling for a revised boundary proposed in the House of Commons by Archy Kirkwood MP.

The Presiding Officer: Before I call the minister, I will clarify my response to Mike Russell's point of order. Although this is not our first committee debate, it is the first on a take-note motion. I have selected amendments in previous committee debates and I hope that Mr Russell will be reassured that the fact that I have not done so today is not a general rule.

15:02

The Deputy Minister for Rural Affairs (Mr John Home Robertson): First, I thank the convener of the Rural Affairs Committee for the thoughtful, constructive and almost conciliatory way in which he moved his motion; the rest of the debate might not be conducted in quite the same tone. Mr Johnstone and the committee have obviously put much work and research into his speech and I pay tribute to everyone concerned for their efforts.

I should stress at the outset that the rural affairs department is very keen to work with the committee; however, I have to say that we are very puzzled by this choice of subject for a full-scale debate in the chamber. Indeed, Mr Johnstone acknowledged the fact that the committee's decision was not unanimous; I am not surprised by that.

The fishing industry is certainly one of the most important responsibilities that we have assumed in this new Scottish Parliament and a number of major issues face our fishing communities at present. In recent meetings with the SFF and around the coast, we have had representations on many issues such as the review of the common fisheries policy; problems arising from the underdeclaration of engine power; restrictions on scallop fishing due to amnesic shellfish poisoning; initiatives to conserve stocks by using square mesh panels; the need to claim a Scottish share of developing fisheries in the north-east Atlantic; and, most important of all, safety measures. I could go on—the list is quite long—but the subject of the boundary of the Scottish zone in the North sea has not been raised at any of them.

I have a close personal and constituency interest in the fishing communities closest to the new demarcation line. Dunbar and Port Seton are in my constituency; until last year, I was a member of Eyemouth Harbour Trust, in Euan Robson's constituency; my wife's council ward includes Burnmouth, which is the port nearest to the line.

Richard Lochhead (North-East Scotland) (SNP): The minister responsible for fisheries seems to be rather isolated in the chamber. Is it not the case that he is indeed isolated because the whole fishing industry wants the boundary to be changed? Is the minister saying that this is not an issue for Scotland's fishermen?

Mr Home Robertson: Yes. The Scottish Fishermen's Federation has not raised the matter with us at any of our recent meetings. If the line were causing problems, we would expect fishermen from those ports to be telling us about them. Last week, I visited Eyemouth fish market and last Saturday I met several Dunbar fishermen at my surgery; nobody said anything about the line. All sorts of other issues have been raised and we are addressing them.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Will the minister confirm that the Scottish Fishermen's Federation has put its view on the issue to the rural affairs department and that it is against the line that is proposed in the order?

Mr Home Robertson: Yes. I do not dissent from that. The SFF put that on record at the very beginning because it was understandably unhappy

about the lack of consultation at that stage. Since then, in all our meetings over recent months, the matter has not been raised. That is not altogether surprising, because it is not causing any problems.

Hamish Morrison, the chief executive of the SFF was quoted in *The Press and Journal* on 5 April as saying that the boundary in the North sea

"does not cause any particular economic difficulty for Scottish fishermen."

We explained that that would be the case when Parliament debated the subject on 3 June last year, and it is gratifying to have that point confirmed.

I appreciate that the issue has a certain attraction for nationalist politicians. I do not mean to be pejorative; it is perfectly fair that nationalists should be concerned about lines on maps. The matter is also of interest to some journalists. However, the Executive has been working with the SFF and others to try to address the issues that really affect the interests of Scottish fishermen. We have been fully and regularly engaged with industry representatives in the 10 months since we assumed responsibility for Scottish fisheries, and we have made significant progress.

We are on the brink of introducing groundbreaking conservation measures in the North sea; thanks to that initiative we succeeded in negotiating an increase of 8,000 tonnes in the total allowable catch for haddock—mostly for Scottish fishermen. We got a very good deal for Scotland at the December Fisheries Council in the European Union. We have set up the new Scottish inshore fisheries advisory group, to give our fishermen a direct input into policy discussions. We have begun the process of increasing local management by approving the Shetland Islands Regulated Fishery (Scotland) Order 1999. I am also working on a new safety scheme for the Scottish fleet.

We have been able to make that progress precisely because the Parliament and the Executive have taken responsibility for Scotland's fisheries. That transfer of responsibility required the area of the Scottish fishery zone to be defined for the first time; that is what the boundary is all about. I am pleased to note that the Rural Affairs Committee specifically accepts the need to define the Scottish and English areas of the North sea.

The committee's report makes several specific points. I will address them in the light of 10 months' experience of the devolution settlement under which the Parliament has assumed responsibility for two thirds of the UK's sea fishing waters—that is 127,000 square miles, from the median line in the Solway firth round to this famous median line in the North sea.

The report repeats the committee's concern about the lack of consultation before the boundary was created. A press release was sent to the SFF and others on 8 March 1999 and the order was debated in committee in both Houses of the Westminster Parliament on 23 March. We have accepted that consultation with the industry should have been much more proactive. We are going to great lengths to establish inclusive and open channels for consultation on fisheries policy in keeping with the Executive's commitment to make government more accountable.

During the debate on 3 June, I gave an undertaking that I would consult fully about decisions concerning our Scottish zone. We are fulfilling that promise. The industry has been consulted about proposed regulations and it has been actively involved in drafting measures such as the Irish sea cod recovery plan and those designed to implement conservation of juvenile haddock in the North sea. On that last point, the industry asked us for more stringent conservation requirements and we were very happy to accept its constructive suggestions.

The new boundary has been considered exhaustively. Ross Finnie and I met the SFF on 4 June 1999, after the previous debate. The Secretary of State for Scotland also met SFF representatives on 24 June. However, as there is no evidence whatsoever that the location of the boundary has any effect on fishermen's interests, the secretary of state has concluded that the median line is an appropriate boundary.

Mr Murray Tosh (South of Scotland) (Con): Will the minister give way?

Mr Home Robertson: This will be the last time that I give way.

Mr Tosh: Without giving his hand away as to the precise details of the radical conservation measures that I am sure he will announce, will the minister tell us what the benefits of conservation measures on the Berwick bank will be, given that they will apply in only one part of the fishery?

Mr Home Robertson: Mr Tosh is displaying his misunderstanding of the way in which things operate. I will come on to aspects of how the common fisheries policy operates. We are negotiating conservation measures that apply not only in the Scottish zone, but in the whole of the North sea. Happily, Scottish interests are dictating the progress of the debate. We are making constructive suggestions that would improve the fishery. The English, the Norwegians and other European interests are following our line.

Richard Lochhead: Will the minister give way?

Mr Home Robertson: No. Mr Lochhead will have his chance in a minute. There is a risk of my

taking up all my time with interventions.

The report goes on to discuss the possibility that different fishery regulations might be made on either side of the line at some future date, which is the point made by Mr Tosh. Yes, with devolved powers we could make different regulations, but it would be absurd for either the Scottish Executive or the Ministry of Agriculture, Fisheries and Food to create circumstances that would harm the interests of Scottish and English fishermen. Apart from anything else, we have an agreed fisheries concordat, which requires consultation between MAFF and ourselves on matters of mutual concern. There will be no surprises of that nature: that is a commitment.

There is not much to be gained from a hypothetical debate about what might happen if Scotland were to be separated from the rest of the United Kingdom at some future date. Frankly, the line in the North sea would be the least of our concerns if we were to get to that point.

As Mr Johnstone said, the report comments on the fact that the boundary set by the Civil Jurisdiction (Offshore Activities) Order 1987 is not the same as the fisheries boundary. I do not know whether that was considered when the fishery boundary was drawn, but I do not accept that it gives rise to any confusion. The adjacent waters boundary applies to fishing activities, which cannot really be confused with tasks associated with oil industry activities. Differences between fisheries boundaries and continental shelf demarcations are not unusual. The latest agreement with Denmark and the Faroe Islands, signed on 18 May 1999, has different lines for fisheries and for the continental shelf.

The committee report refers to fishing activity in the area between the median line boundary and the line due east from Marshall Meadows at Berwick-upon-Tweed—the famous 6,000 square miles. We can now reflect on that with the benefit of 10 months' experience. The key point is that fishermen retain their rights to fish where they have a legitimate track record, regardless of the creation of the new Scottish zone. Scottish boats therefore retain their rights to trawl for prawns off the coast of Northumberland, for mackerel off the coast of Cornwall, for sea bass in the English channel and for scallops in the Irish sea, to name just four different fisheries—there are many more.

The suggestion that the adjacent waters boundary has any effect on access to fishing grounds, as Mr Tosh indicated, is based on a fundamental misunderstanding of the common fisheries policy.

Lord James Douglas-Hamilton (Lothians) (Con): Will the minister enlighten the Parliament as to the extent to which oil considerations played

a part in the decision?

Mr Home Robertson: None whatever. The boundary is to do with fisheries, not oil. I hope that I just explained that point. [*Interruption.*] Perhaps if someone answers that telephone we will get some inspiration.

Dorothy-Grace Elder (Glasgow) (SNP): The minister said that fishing boundaries would not be a point of particular dispute when Scotland gains independence.

Mr Home Robertson: I did not say that.

Dorothy-Grace Elder: Will the minister however accept that oil boundaries and oil deposits would be fertile ground for dispute and that those may indeed be the hidden reason for this piratical act by the Executive?

Mr Home Robertson: That is an intriguing conspiracy theory. I stress that the line is to do with fisheries. As Mr Johnstone has indicated, the oil installations in the area are in the process of being decommissioned, so I am not sure that there is much in the way of oil reserves to think about. I stress again that the line is the median line for fisheries purposes.

Alasdair Morgan: Will the minister give way?

Mr Home Robertson: This really is the final time that I will give way.

Alasdair Morgan: The minister has said that oil considerations did not play any part in the decision.

Mr Home Robertson: I said that I did not know.

Alasdair Morgan: If I may correct the minister, that is not what he just said. I am glad that he said that, because in answer to me when I asked him why this particular line was drawn he said, "I was not directly involved so I honestly do not know." I assume that the minister is saying that he does not know any more now than when he spoke to the Rural Affairs Committee last year on this matter.

Mr Home Robertson: No, of course not. I was not involved, but the point that I am trying to make is that this line is to do with fisheries—it is nothing to do with oil—so that point is not relevant.

If I may come back to access to fisheries, a Scottish fisherman with a quota for North sea haddock can catch that fish in any part of the International Council for the Exploration of the Sea area IV, subject to the provisions of the CFP and agreements between the EU and Norway. Area IV as defined by the ICES stretches from the north of Norway to Kent, so while the adjacent waters boundary might, hypothetically, have a minor implication for the case load of the sheriff court in Duns, it makes no difference whatsoever to fishing

operations. Those haddock can be caught anywhere between the north of Norway and Kent.

Richard Lochhead: Will the minister give way?

Mr Home Robertson: No. I am sorry, but I have given way quite enough.

I have obtained some figures for fishing activity that may help to put this debate into perspective. We reckon that the sea-fishing activities of our 2,600 Scottish boats in the 43 weeks since the boundary was created will have been in the region of 400,000 trawler days at sea. Meanwhile, we have established from logbook reports that our fleet clocked up just 160 trawler days in the 6,000 square mile segment east of the land border. Therefore, fishing in that area accounts for less than half of 1 per cent of our fleet's activities. To say that the area is lightly fished would be something of an understatement. The area has been patrolled by the Royal Navy fishery protection service since 1 July 1999, but no fishing vessel from any nation has been prosecuted for any alleged breach of fishing regulations, and there are no cases pending.

The committee concluded that responsibility for any change to the boundary lies with the Westminster Parliament and recommended that the Secretary of State for Scotland should establish a new boundary running well south of the median line. The Executive is content to take note of that recommendation from the committee, and we will not vote against the motion, but it is important to recognise that such a change to the boundary would not achieve any advantage whatsoever for our fleet and it could undermine our excellent relationships with fishing interests in other parts of the UK, so I would be inclined to oppose such a measure in the House of Commons if it were ever to come to a vote.

This is the second time we have debated this subject in this chamber in just 10 months—a subject for which responsibility lies fairly and squarely with the UK Parliament. I hope that we can now move forward and concentrate on issues that really do affect the interests of Scottish fishermen and which lie within the responsibilities of this Parliament. I want to get the best possible deal for Scottish fishermen: the best quotas possible from European negotiations; more rational regulations; a better return from the market for better quality fish; the protection of Scottish interests in the review of the CFP; and a safer fleet. Those are the issues that really matter to our fishing communities.

The committee has made its point about the technical issue of the boundary, and we take note of it. I hope that the chamber and the industry will take note of the practical steps that the Executive is taking to protect and promote the interests of

our fishermen, not only in the Scottish zone but in all the waters and councils of the UK and the European Union. That is what really matters to our fishing communities.

15:19

Richard Lochhead (North-East Scotland) (SNP): Given the participation of the Royal National Mission to Deep Sea Fishermen in time for reflection, I welcome today's fishing theme, even though it is only a coincidence. I am sure that we all recognise the mission's good work in our fishing communities.

I am delighted that we are debating fishing again in Scotland's national Parliament. We have debated fishing more times in our first 10 or 11 months than would happen in several years in the Westminster Parliament, which shows that the establishment of this Parliament is a step forward for our fishing communities.

As Alex Johnstone, the convener of the Rural Affairs Committee, said, we are one year on from the first debate on the boundary dispute. I know that the minister and his colleagues had hoped that the matter was dead and buried a year ago, but it is alive and kicking and remains a burning issue throughout Scotland.

I congratulate the fishing industry on keeping the issue in the limelight and on continuing the campaign. The Deputy Minister for Rural Affairs said that the boundary dispute is a non-issue, but it is one of the most significant issues to have faced this Parliament. He said that it was not an issue for our fishing communities, yet one has only to look at the time and expense that fishermen's representatives have put into campaigning for the boundary to be changed to see that it is. They have issued leaflets and given briefings; they have attended party conferences to put their case. The minister and I attended the Scottish Fishermen's Federation annual dinner recently, where the boundary dispute was the No 1 priority in the president's speech. So that the minister is aware of the strength of feeling around the country, I will send him a copy of the SNP's petition on the boundary dispute, which has been signed by thousands of people in the hope that they can get the boundary changed.

Since we first debated this subject in Parliament, a number of developments have moved the debate on and have demonstrated why it remains a burning issue. The main development is the report from the Rural Affairs Committee—a cross-party committee that recognised that the issue deserved detailed and considered investigation and that took evidence from fishermen's representatives and the fisheries minister. The result was that the committee came down on the

side of the fishermen.

Lewis Macdonald (Aberdeen Central) (Lab): Mr Lochhead is right to say that the Rural Affairs Committee is cross-party, but will he confirm that its conclusions on this matter were not reached by cross-party agreement?

Richard Lochhead: If the member wants me to confirm that one of the unfortunate developments in the parliamentary committee system is that some people will not depart from the party line, I am happy to do so. Three out of the four parties represented on the committee supported the recommendations.

Lewis Macdonald: Will the member give way?

Richard Lochhead: I want to move on.

I want to sum up where we stand today and to ask each member of this Parliament to search their conscience and to take on board the following information. We know now that the new boundary was created by an obscure committee in Westminster that could not be bothered to wait to consult the Scottish Parliament, which was just about to be established. We know now that ministers accept that there was a lack of consultation by the Westminster Parliament—they have described that lack of consultation as deplorable. Ministers have admitted that the information on which to base a valid decision was not available and that there was no attempt to find it. Ross Finnie said in the debate last June that the order related only to fisheries, yet, as the Rural Affairs Committee discovered, it has implications for many other matters, such as the Food Safety Act 1990 and the Food and Environment Protection Act 1985, as Alex Johnstone said in his opening remarks on behalf of the committee.

We know from the Westminster debate on the boundary that some of the members who agreed to the legislation did not understand it. One member of the committee, Russell Brown, said that he was totally confused by what he was discussing and another, Alan Beith, said:

"I retain a certain nervousness."

He wanted to be assured that the principles that Henry McLeish described

"have been applied correctly and that, if they prove to have been in error, it is recognised that we shall have to return to the issue, if necessary with a modified order."—[*Official Report, House of Commons, Third Standing Committee on Delegated Legislation*, 23 March 1999; c11.]

The people at Westminster seem to have a better grasp of reality than our fisheries minister in Scotland does.

We know now that the Scottish fishing industry is united against the new boundary and is supported by local authorities—such as

Aberdeenshire Council—that have voted on the matter, and by other bodies, such as the North East Scotland Fisheries Partnership. We also know now that we have the absurd position that Scotland has two sea boundaries with England. We have a Liberal Democrat MP at Westminster who is trying to reverse the legislation. Also important is that we have the report from the Rural Affairs Committee. Those are some of the developments since we last debated this issue in the chamber. It is deplorable that the fisheries minister still maintains that this is a non-issue in Scotland.

Mr Home Robertson: I hear what Richard Lochhead is saying about the line but, so that we can have an informed debate, it would be helpful if he could say whether he has any evidence that any problem has been caused to any fisherman by the location of the line.

Richard Lochhead: I shall come to that in a few moments.

The Government's last line of defence of Westminster's decision to change the Scottish fishing boundary is to say that we should not worry, because the line is based on international conventions; the Government knows what it is doing because it gave a lot of thought to the location of the line and took advice on the international conventions.

I want to demolish that last line of defence. I am not a legal expert, nor, I suspect, are the minister or his colleagues. Therefore, I listen to those who have such expertise. The minister will know that the SNP commissioned an independent legal opinion on the boundary from Dr Iain Scobbie of Glasgow University, who is internationally renowned on these matters. He concluded:

"It is clear that the position set out by the Government in relation to the Scottish Adjacent Waters Order is not in accordance with . . . international law and practice. The claim that the delimitation employed in this Order reflects 'the normal international convention' simply cannot be sustained."

Lewis Macdonald: Does the member accept that Dr Scobbie's legal opinion lays out very clearly that it is universal practice to employ the median line within the territorial waters of coastal states; that 89 per cent of cases involving the fishing and economic zones of opposite countries, such as Britain and Norway, are settled on a median basis; and that between countries that have adjacent coastlines, such as Scotland and England, the median line is the most common way of defining the maritime boundary?

Richard Lochhead: I am happy to clarify that 60 per cent of cases do not use the line that the Westminster Government used.

However, members should not take the SNP's

word for it. If they are not happy about the fact that Dr Scobbie's assessment was commissioned by the SNP, we should consider the international legal authorities that entered the debate of their own volition. They were not invited to enter the debate by the SNP or by any other political party, but did so because they read about it in the press and felt strongly about it.

The internationally renowned lawyer, Alan Perry, of D J Freeman—in London, of all places—published his views on the Anglo-Scottish maritime boundary in the "Litigation Review". He gave his opinion because he felt so strongly about the matter. He called the Government's ruling on the boundary a "dreadful blunder" and labelled its claim to be following international law as "disingenuous in the extreme".

One could not find a better authority on these matters than Professor James Crawford of Cambridge University, who referred to the fishing boundary in a lecture on international law that he gave at Edinburgh University. He said that the boundary that was established by the Westminster Government was "untenable". Just as the minister cannot name a fisherman in Scotland who supports the new boundary, he cannot name any UK or international authority—outwith the civil service—that supports the Government's fishing boundary.

The SFF's letter to the Minister for Rural Affairs, which was quoted in the Rural Affairs Committee report, said that

"the Federation remains baffled as to how any member of the Scottish Parliament, can acquiesce in an arrangement which conveys jurisdiction and sovereignty over 6000 square miles of Scottish sea area out of the control of the Scottish Parliament."

That is the crux of the matter, which every member has to take on board. It would be scandalous if our fisheries minister got away with constraining the Parliament's ability to fight for Scotland's fishing community. His behaviour since this saga began has been bizarre. He should hang his head in shame for zealously defending a decision that was taken not by the Administration to which he belongs but by another Parliament, 500 miles away in London. He should stand up for the industry that he is supposed to represent—Scotland's fishing industry.

The minister says, of course, that there is no real problem, because his policies will never differ from those of the Ministry of Agriculture, Fisheries and Food in London. We therefore have to ask: what is the point of the existence of this Parliament, and what is the point of devolution for Scotland, if we have a fisheries minister who says that his policies are never going to differ from those of MAFF in London?

What if the Scottish Executive wanted to implement conservation measures to protect stocks in the disputed area? That is possible, because different mesh sizes are used in different areas of the North sea and off the west coast, as the minister knows. What happens if the Executive chooses to implement conservation measures in area IVb that are different from those implemented by the Government in London? In effect, the minister is saying that, unless London agrees, he would not be willing to implement special conservation measures to help the stocks that are fished by our fleet. That is not a credible stance.

This Parliament has to achieve the best deal for Scotland. We should feel no shame in saying that; our job is to stand up for Scotland, our communities and our industries. That is why we were elected; that is why we are here. We should not have a fisheries minister who is devoting his time and energy to defending the positions of Parliaments elsewhere. If we do not argue for the best deal for Scotland and her fishermen, people will wonder what the point is of having a Scottish Parliament.

The SNP calls on the Executive to take on board the findings and conclusions of the Rural Affairs Committee's detailed report. Most of all, we call on the Executive and the fisheries minister to get behind Scotland's fishermen and our fishing communities. We call on the minister to do what he can to persuade Her Majesty's Government in London to implement the recommendations in the report.

I shall stop there, and let the debate proceed.

The Deputy Presiding Officer (Mr George Reid): And the debate proceeds with David Davidson.

15:32

Mr David Davidson (North-East Scotland) (Con): Just so that there is not too much concord, I begin by disagreeing with the tone of the report of the Rural Affairs Committee. Expressions of disappointment are hardly likely to bring about change and warm words most certainly will not comfort our fishermen, who will face increased costs and therefore competitive disadvantage if the boundary enforcement—arrived at without consultation—is allowed to stand. The Blair mantra of "listen to the people" is a joke. How can one listen if one does not consult?

Because of the absence of any amendments to the motion, the Parliament is virtually unable to call on the Executive to go to London and have the boundary error reversed. We must hope that we can persuade the minister, who is the relevant authority, to listen. If he says that he will accept the motion, will he promise today that he will act

on the recommendations of the Rural Affairs Committee, which spent a lot of time on this issue?

The Parliament should ask what the thinking was behind the Labour Government's imposition of this arbitrary line. My colleague, Lord James Douglas-Hamilton, asked whether oil was involved. The minister responded that he did not know. One would have thought that he would have had some kind of dialogue with the London Government. If he is prepared to accept MAFF's words and policies without question—and he has just said that he will—MAFF must surely consult him to tell him what is going on and to give him the chance to ask questions. I find it amazing that the minister has such a blinkered view that he must look at fish in only the narrowest of positions.

Mr Home Robertson: In the water? [*Laughter.*]

Mr Davidson: The minister's way is not the way in which to approach this issue. Why did the management boundary issue arise in the first place? We have not had an answer that convinces anybody—and the fishermen have certainly not been convinced. What was wrong with consultation? What was the Government afraid of? Was this yet another demonstration of the arrogance that we so often see from the Labour Government, with the minister meekly standing by? Does the minister feel that there is anything to apologise for? He has heard from Richard Lochhead of the efforts made by the fishermen's leaders to get the message across, but we hear nothing back, except that there is no problem.

I have another worry—although I may be the only one who worries in this way, as I try to be a bridge builder on legislative changes. As this boundary has been moved, is there a risk that the 1987 line may be moved at some future date? The minister might be setting a dangerous precedent. I am no more a lawyer than Richard Lochhead is, so I do not know the answer, but I raise the point in earnest. We must start thinking about these issues sensitively if we are to make the devolution settlement work.

I believed that the Labour party intended to maintain and strengthen the union. An unnecessary distraction such as the matter that we are discussing today does not suggest that the Labour party in Scotland or in the rest of the UK is keen to make devolution work. The Conservative party came here to make the Scottish Parliament work. We can do that on a cross-party basis—I will even agree with the Liberal party when its position is right—but cross-party agreement will help devolution work only if the Executive listens to what is said in this chamber.

The boundary duplication places us in a ridiculous situation. We have apparently brought in

international law to solve a domestic dispute—I imagine that that is almost a world first. It is especially strange given that this great kingdom went around the world in past centuries and sorted out boundaries that have stood the test of time and involved huge tracts of land.

Alasdair Morgan: Does David Davidson accept that the situation is even worse than he describes? Not only did we bring in international law to solve a domestic dispute, but we did not have a dispute until the regulation was passed.

Mr Home Robertson: There was no dispute.

Mr Davidson: The chamber should note that the minister said that there was no dispute. We must ask: why did his party's Government in London start one?

Mr Home Robertson: I know that Mr Davidson is trying to be helpful. He said that he wants devolution to work. He should therefore bear in mind the fact that this Parliament is taking responsibility for a wide range of issues that have been devolved to us from Westminster, including fisheries, and that, if we are to take responsibility for Scotland's fisheries, there has to be a demarcation of the Scottish fisheries zone. No such demarcation existed before and one exists now, on the basis of a median line.

Mr Davidson: I accept the principle. Will the minister accept the fact that the line that has been there by custom for many centuries and was confirmed in 1987—

Mr Home Robertson: Where?

Mr Davidson: The oil and gas line. Why not accept that line? The custom and practice worked fine. The fishery protection vessels covered that area and the Royal Navy came up to that line. What we have now is a no-man's land. I was interested to hear the minister say that the Royal Navy had been patrolling the area. It might have a responsibility to do so, but the fishermen's leaders say that they have not sighted a patrol vessel there. Can the minister give us any evidence that the area is being protected? Protection against illegal fishing in that area—particularly from abroad—is in the interests of all Britain's fishermen. I would like the minister to give us confirmation on that at the end of the debate.

Mr Home Robertson: I can give it now. The area is being patrolled.

Mr Davidson: I look forward to hearing the details later.

I come from a fishing family that has lost members at sea. I recognise the importance of the safety of fishing vessels. The minister has mentioned a litany of things that he is about to consider in that regard. Why did the Government

waste energy considering the issue that we are discussing rather than doing something about the long list of issues that the minister claims he is going to deal with?

The minister was not involved with this matter, but the Secretary of State for Scotland, John Reid, was. He met the Scottish Fishermen's Federation and asked it to state the difficulties that fishermen were facing over the issue. That statement was sent within a week of the meeting. In return, he promised that the Government would send out a circular to skippers and owners explaining why the change was a good thing for fishermen. That has never been done and I expect that even the good Dr Reid cannot defend the indefensible.

Euan Robson (Roxburgh and Berwickshire) (LD): Is the member aware that the Secretary of State for Scotland replied to the fishermen? I accept that he did not do so in the form of a circular, but he wrote to the chief executive of the Scottish Fishermen's Federation on 15 September. The substantial letter addressed a number of the fishermen's points. Consultation took place and a response was given. On the narrow point, as to whether a circular was produced, I concede that David Davidson is right, but would he concede that the secretary of state replied to the consultation process?

Mr Davidson: I made a point, and I will stand by it. I have been advised that it is correct. The fishermen expected the secretary of state to respond, as he said he would. As far as I am aware, he did not withdraw that offer to the Scottish Fishermen's Federation.

Let us examine the way in which the Executive deals with matters. The Executive seems content to accept at face value comments and activities of ministers in London that affect all parts of the UK. There is the continuing saga of Scottish trust fishing ports. John Prescott decided, in his wisdom, to issue a regulation that would remove the elected status of many of those port authorities and introduce a system of appointees, despite the fact that their boards had worked efficiently over many centuries and represented the users of the ports and the hinterland that serviced and was serviced by the ports. Within an hour of the statement's release in London, a minister here—not the fishing minister—issued a press release saying that that was okay by her.

The Executive in Northern Ireland said, "We are not doing this; we will reserve our position and consider whether this piece of legislation will adversely affect our ports." Why did the Scottish Executive do what it did without seeking to consult? The evidence is damning; the minister will eventually have to explain to us what he will do and how the fishing community can have confidence in its dealings with the Executive.

In the debate last year, Ross Finnie stated that no one would incur material disadvantage. He also stated:

"The rights of fishermen are not altered by the order."—*[Official Report, 3 June 1999; Vol 1, c 226.]*

That is utter rubbish—traditional and long-standing rights to be protected by Scottish law and to be represented in a Scottish court have been usurped. The Berwick bank fishing, enjoyed by Scottish boats for generations, is now divided between two jurisdictions. The boundary was not drawn with any regard to fishing; it was an arbitrary line that was drawn unnecessarily, although the minister will argue that it was done by international agreement.

In last year's debate, Ross Finnie stated that he would write to the appropriate Westminster minister to explore whether flexibility might be applied to prosecutions, should anybody allegedly transgress in the area. Has that letter been written? If so, what response has there been? The minister was keen to intervene earlier; perhaps he would like to give us an answer to that now.

Mr Home Robertson: No, carry on.

Mr Davidson: In the same debate, Euan Robson asked why the Government was invoking international law in a domestic situation. We did not get an answer then; I hope that we will get an answer to that question today. Perhaps, if Mr Robson participates in this debate, he will ask his question again. We will listen with interest to hear what answer he gets this time.

If we are a United Kingdom, surely under the devolution settlement any issues arising over interpretation of European Union regulations should not be so divergent between England and Scotland that common sense, instead of international law, cannot settle them.

Further to Mr Finnie's comments about rights, has the Executive researched the value of contracts to the oil industry that could be lost to Scottish vessels? Having listened to the minister's comments today, especially his answers to members' questions, I wonder what ministers have learned since last June.

Today, this Parliament is being asked to support a call for a revised order. I ask members to vote to do just that. That would demonstrate that this chamber supports the fishermen; it would show them they can have confidence in us to look after their genuine interests and concerns. The Executive must not just accept the motion moved by the convener of the Rural Affairs Committee to note the report, but act on it.

The Deputy Presiding Officer: I call Euan Robson. I am sorry—I meant to say Mike Rumbles.

15:45

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): The first thing that I would like to make absolutely clear is the firm support from the Liberal Democrat group for the terms of the motion. Both John Farquhar Munro and I, as Liberal Democrat members of the Rural Affairs Committee, voted for this motion in committee to ensure that a practical way forward could be found in which to resolve the problem and to support our fishermen.

Any reasonable person who has followed the history of this affair, so ably outlined by Alex Johnstone, can only draw the conclusion that a simple mistake was made when the Westminster Parliament drew up the Scottish Adjacent Waters Boundaries Order 1999. The first attempt to put that mistake right was made in this chamber when we debated the issue on 3 June 1999; the Executive has addressed the terms of the motion that was agreed on that occasion.

Unfortunately, no moves were made by Westminster on the issue, and the Rural Affairs Committee rightly decided to pursue this important matter. The committee decided to recommend that the Secretary of State for Scotland should either introduce a revised order or support the bill proposed in the House of Commons by Archy Kirkwood MP calling for a revised boundary. That was, and remains, the practical way forward.

The way in which the SNP and the Conservatives seem to have politicised the issue, by using it, metaphorically speaking, to beat Labour over the head at every opportunity, has ensured that the Secretary of State for Scotland has not budged.

Mr Davidson: If we are seeking to represent the views of our constituents in the north-east of Scotland—I am sure that Mr Rumbles is aware of those views, as he has some small responsibility up there—how can he claim that we are being political? We are merely acting as representatives.

The Deputy Presiding Officer: Euan Robson? I am sorry—I meant Mike Rumbles. [*Laughter.*]

Mr Rumbles: Second time, Presiding Officer.

I shall come to Mr Davidson's question in a moment.

The approach that I have described appeals particularly to SNP members, who continue to use this issue as an effective but, I believe, irresponsible weapon to keep bashing Labour. In using those tactics, the SNP risks damaging its case for the boundary change. The SNP is using real anxieties expressed by the Scottish Fishermen's Federation to promote its own interests and the nationalist agenda.

Mr Tosh: Will Mr Rumbles give way?

Dr Winnie Ewing: Will Mr Rumbles give way?

Mr Rumbles: I shall not give way. The irony is that—

Dr Ewing: Will the member give way?

Mr Rumbles: The irony is that, if Scotland became—

Dr Ewing: Give way.

The Deputy Presiding Officer: The member is not giving way.

Mr Rumbles: If Scotland became independent, the international boundary would indeed lie on the disputed line.

Dr Ewing: This is not acceptable; the member should give way.

The Deputy Presiding Officer: Order.

Mr Rumbles: The SNP's position is completely illogical if campaigning on this issue is part of its strategy for independence. However, that does not stop the SNP. The issue provides it with a good opportunity to keep giving Labour a good bashing. Who said that we were in the era of new politics?

I return to my main point. The complete lack of action by the Secretary of State for Scotland has provided the SNP with a campaigning issue from what should essentially be a technical matter stemming from the home rule settlement. If fishermen had been properly consulted in the first place, they would have had more confidence in the finalised boundary.

The secretary of state's view can be justified only if he believes that changing the boundary sets an unwelcome precedent. In my view, that is an entirely negative and unnecessary approach. He could have taken the opportunity to demonstrate positively that both the UK Government and the Scottish Executive are prepared to work in partnership to smooth out difficulties such as this that have emerged as a result of the Scotland Act 1998. It was a mistake.

Richard Lochhead: Will Mr Rumbles clarify one point? Is the Liberal Democrat group in the Scottish Parliament saying that it supports the fishing industry's request for the Scottish Executive to open up negotiations with Westminster for a change to the boundary?

Mr Rumbles: I am happy to answer that question. The position of the Scottish Liberal Democrats is quite clear. This is an issue for the Westminster Parliament. It is up to the members of the House of Commons to take action, and they have the opportunity to do so.

It is the view of the Scottish Liberal Democrats

that the report of the Rural Affairs Committee is sound and is a practical way forward in rectifying the boundary mistake. This chamber needs no reminder that responsibility for the matter resides at the Westminster Parliament. Of course it is right that we have a view on it, but I am sure that Richard Lochhead would agree that the responsibility for rectifying this mistake lies not with the Scottish Executive, but with action in the House of Commons.

Mr Tosh: Is it part of Mr Rumbles's concept of devolution that this Parliament should have a responsibility in relation to Westminster and to matters that are not devolved? Neither this Parliament nor the Executive have been slow to lobby the Government at Westminster and to make representations to it about a range of important matters. Is that not an important part of the role of a devolved Parliament?

Mr Rumbles: I think that Murray Tosh has misunderstood me—I said quite clearly that it is right that we take a view on this matter. That is what today's debate is about. We have a good, useful report from the Rural Affairs Committee; we wish to take note of it and to send a message to Westminster saying that it has the opportunity to take action to change what has been done. Murray Tosh should realise that that is what home rule is all about. Westminster takes decisions for the whole of the United Kingdom while we, in this chamber, take decisions on devolved matters.

Mr Tosh: I did understand Mr Rumbles, then.

Mr Rumbles: It does not sound like it.

Richard Lochhead: Will Mr Rumbles clarify whether it is the position of the Liberal Democrat group that the Scottish Executive should play a role in trying to implement the recommendations of the Rural Affairs Committee report?

Mr Rumbles: The position of the Liberal Democrats is clear. I am sure that Mr Lochhead would agree that the report is aimed at the Secretary of State for Scotland. It recommends that he does one of two things: introduce a new, revised order or support the bill calling for a new boundary that was proposed in the House of Commons by Archy Kirkwood, whose constituency, Roxburgh and Berwickshire, this matter most directly affects. The Rural Affairs Committee is clear on that; it is what this debate is all about. The debate is not about asking the Executive to do anything other—

Alasdair Morgan: Does the member believe that the Scottish Executive has any influence with the Secretary of State for Scotland? If it has some influence, should it try to use it to persuade the secretary of state to follow the committee's recommended course of action?

Mr Rumbles: Alasdair Morgan voted for the motion before us, which takes note of that. Alasdair Morgan supports that position and I am in complete agreement with it.

The Scottish Liberal Democrats believe that we should try to take the party politics out of this issue. It is clear, from the comments made by Richard Lochhead and David Davidson, that we should do so. The SNP in particular uses every opportunity that this mistake and the failure to rectify it provide to bash the Labour party. It is really the House of Commons that it should be bashing.

The Liberal Democrats have only one agenda: to resolve amicably the difficulties faced by our fishermen and to get this ridiculous situation put right. In my view, there is now little chance that the secretary of state will propose that the boundary be put right. If the SNP stopped bashing Labour, there might be some chance of Archy Kirkwood's bill making some progress.

Mr Davidson: Will the member give way?

Richard Lochhead: Will the member give way?

Mr Rumbles: I am sorry, I wish to finish.

I appeal to members, especially to Richard Lochhead, to put the interests of our fishermen first. Stop rushing out press releases—I am sure that Richard has one in his back pocket already—attacking Labour on this, and we might make some progress. We might even have a situation in which Archy Kirkwood's bill is not blocked. That is the only practical way in which to sort out the technical mistake. David Davidson, for the Tories, blames the Executive for inaction, but this matter is not a Scottish Executive responsibility.

Mr Davidson: Will the member give way?

Mr Rumbles: I say to David Davidson, for goodness' sake, let the House of Commons sort this one out without such blatant political exploitation. This issue is for the House of Commons; we should give it the space to sort it out.

Mr Davidson: Will the member give way?

The Deputy Presiding Officer: He will not give way, Mr Davidson.

Mr Rumbles: In conclusion, the Scottish Liberal Democrats whole-heartedly support the Rural Affairs Committee report and trust that, for our fishermen, the mistake—as that is what it was—over the fishing boundary will be corrected in the proper place. Please give the House of Commons space to put it right, as I am sure it will do.

The Deputy Presiding Officer: We will now have speeches from the floor of about four minutes, with one minute for interventions.

15:55

Lewis Macdonald (Aberdeen Central) (Lab):

Like other members, I was pleased to hear Mike Rumbles's new motto—"Stop bashing Labour"—and I hope to hear it resound around the chamber many times over the next three years. Like other members, I welcome the fact that we are debating a rural affairs issue, and a fisheries issue. However, I do not pretend to welcome the fact that the majority of members of the Rural Affairs Committee put this specific issue at the top of their list of priorities. I do not believe that it is the most pressing issue that faces the Scottish fishing industry today.

It is important that members in general be aware of the full facts about the Rural Affairs Committee's report and the views of all the committee members. I draw members' attention, first, to one sentence in the report, in paragraph 13, which was quoted by Alex Johnstone, the committee convener. It states that

"some members of the Committee felt that it should not follow the same course as the House of Commons Committee which considered this matter, by seeking to define a boundary line without adequate consultation."

Alex Johnstone said that all views were taken into account in the preparation of the report but, sadly, that one sentence is all that survives—in the main body of the report or in the summary of findings and conclusions—as evidence of the fact that this issue divided the membership of the Rural Affairs Committee and led to considerable debate among those members on the correct way forward.

Certainly, I was surprised to discover that there is no provision in the standing orders for a minority report from members of a parliamentary committee. I was even more surprised to discover that the majority of members of a committee, if they so wish, can vote to remove any reference to a division of opinion from the body of text of a committee report. So, there can be no minority report, and no right for minority views to be published or for the arguments to be laid out in the report of a parliamentary committee—that is very unfortunate. Further, as the drafts of the report were debated and decided upon in private, there is not even an *Official Report* of those proceedings.

Richard Lochhead: Given that the member has spent the first two minutes of his speech talking about parliamentary procedure, would he care to address the Rural Affairs Committee's report?

Lewis Macdonald: Sadly, Richard Lochhead's intervention is very much in line with his approach to the whole debate. As a member of the Rural Affairs Committee, I consider the procedures of the Parliament and the committees to be of critical importance to us all; in no way does that detract from the substance of the issue that is before us.

To pretend that the way in which Parliament deals with such issues is unimportant is also very unfortunate.

I hope that the way in which the report was put together, and the way in which minority views were removed from it, will not set an unfortunate precedent for the future business of other parliamentary committees. The Scottish Parliament should be ahead of other Parliaments, not behind them, in representing and reflecting all shades of opinion.

Alasdair Morgan: Will the member confess that he is over-egging the custard somewhat? In particular, in relation to his reference to divisions, the only proposal was that reference to those divisions be removed from the main body of the report to the appendix. There is no question of anything being swept under the carpet regarding those divisions.

Lewis Macdonald: It is true that there is reference in the report. If the reader cares to search through the appendices and interpret them, it is clear what the divisions were about. This is an important matter, and I think that it is appropriate to bring it to Parliament's attention in the debate.

The Rural Affairs Committee has failed to support the principle of representing all views as fully as it should. As I said, that is unfortunate. In the end, however, in spite of the arguments that were made in private, the majority of members chose to do just what they condemned Westminster for doing: declaring where the boundaries of the two fisheries zones should lie, without any consultation. One Parliament fails to consult fishermen on where the Scottish and English fisheries zones should begin and end, so somehow the other Parliament—this one—is supposed to pretend to lay down the law, without consulting anyone either, on precisely the same question. That proposition makes no sense at all.

Richard Lochhead: Lewis Macdonald says that the Rural Affairs Committee reached its conclusions without consultation, but he was present when the committee took evidence from the fishing organisations and the Scottish Executive. Was that not consultation? Were the committee's findings and recommendations not in line with the wishes of the fishing industry in Scotland? If they were not, can Lewis Macdonald provide evidence that the industry's view is different?

Lewis Macdonald: I accept that we took evidence from the Scottish Fishermen's Federation. What seems to have escaped the attention of some SNP members is that this legislation defines the boundary of the English fishing zone as well as the Scottish zone, and that needs to be considered. Westminster is

responsible for this issue because it affects both Scotland and the rest of the United Kingdom. It is precisely because Westminster has a duty to consult and has responsibility for the law in this area that it is appropriate that the issue should be taken up there and not here. This is a reserved matter. It is an important matter, but it is one that is appropriate for the House of Commons to determine.

16:00

Irene McGugan (North-East Scotland) (SNP):

There was never any doubt about the need for a boundary line to define the legislative and administrative competence of this Parliament. What was and continues to be in doubt is the need for a new and separate line when a boundary already existed for the purposes of civil jurisdiction offshore.

When giving evidence to the committee, the minister was unable to identify any advantage in having the boundary redrawn, and was unable to identify any organisation that was in favour of or content with the new line. The Scottish Fishermen's Federation, on the other hand, which represents 90 per cent of the industry's catching capacity, was unanimous in its opposition to the measure. That is quite a disparity.

The committee concluded that the basis for this on-going difficulty was the lack of information that was made available and the lack of consultation that took place prior to the order's being approved. In total, that comprised the issuing of a press release and the publication of a statutory instrument. The minister has acknowledged that he would have liked more consultation about the new boundary. He admits that the consultation conducted by Westminster was flawed, but he still stands by the UK Parliament's decision.

The committee learned that no account was taken of the extent of fishing activity in the disputed area. The minister admitted that he lacked information on that matter—information about boardings and sightings in the past three years of Scottish vessels in the disputed area that the SFF was able to supply and confirm. Some simple dialogue with interested parties prior to any decision being taken would have identified all the anomalies, objections and facts, and might have resulted in a totally different outcome. We have the facts now and are aware of the overwhelming objections of the industry. It is time that we acted on those.

In giving evidence, the minister pointed to another factor that was influential at the time that this order was being processed. A substantial number of consequential regulations and statutory instruments had to be enacted prior to devolution.

The minister said:

"I do not blame anybody for the fact that some people missed some of the information that was going around."—*[Official Report, Rural Affairs Committee, 2 November 1999; c 188.]*

Richard Lochhead has already alluded to the MPs who found the references confusing and were unsure of the implications of what they were discussing.

The busy schedule leading up to devolution may have affected the preparation and publication of the order, but why does the minister continue to defend the decision of another Parliament that was at best a mistake and at worst a piece of deception with potential long-term constitutional implications? It would be disheartening for democracy in Scotland if this Parliament ignored the overwhelming evidence compiled by the Rural Affairs Committee and chose arrogantly to uphold Westminster's decisions.

The findings of the committee's report are clear. There is no good reason for having two boundaries and a number of good reasons for having only one. If, as the minister has stated, there is no advantage or disadvantage arising from the location of the boundary, why was the Scottish zone redefined and why does he continue to defend that decision so vigorously?

I remind the minister that the fishing industry is many times more important to the Scottish economy than it is to the English economy. He has a duty to defend the interests of one of our most significant traditional industries. He told the committee:

"If I thought that there were some strong reason to make representations for a shift in the boundary, I, not least as a member of the UK Parliament, might well do that."—*[Official Report, Rural Affairs Committee, 2 November 1999; c 197.]*

I suggest that such representations from the minister are long overdue. The Parliament must heed the recommendations that are made in the committee's report for the Secretary of State for Scotland to introduce a new or revised order.

16:05

Rhoda Grant (Highlands and Islands) (Lab):

While I firmly believe that the fishing boundary is not the most important issue facing the fishing industry, I believe that lessons need to be learned—and have been learned—from this matter.

While the Rural Affairs Committee was taking evidence, I was struck by the fact that most arguments came down to potential problems. What if the Scottish Parliament legislated for different net sizes from the rest of the UK? Would the fishermen have to change their gear when

fishing in that area? What if the fishing crew was arrested and taken to an English court? Would they have to instruct an English lawyer to deal with their case? While such problems may never happen, one complaint that was not hypothetical was that of the lack of consultation with the industry on the boundary. That complaint stood up to scrutiny, which is why lessons must be learned and, I believe, why they have been learned.

Organisations now complain to me about the mass of consultation documents they receive. That is good, as it shows that the Executive is willing to listen. The Executive has established the Scottish inshore fisheries advisory group, which enables the fishing industry to have an on-going dialogue with the Executive.

The committee also dealt with the Shetland Islands Regulated Fishery (Scotland) Order 1999, which enables Shetland fishermen to manage locally their industry, to plan ahead and to protect their livelihood and that of their children. Such regulations are also being implemented in Orkney, and I hope that they will be extended to the Highlands.

We are also in the process of considering Tavish Scott's Sea Fisheries (Shellfish) Amendment (Scotland) Bill, which makes a simple but effective amendment to current legislation and which has important implications for fishermen.

Much of the economy of the area where I was brought up depends on inshore fisheries. Because of the lack of local control and management of those fisheries, problems have arisen, with different fishing methods not being implemented sympathetically. When I was a child, many of the creelers caught lobsters and crabs, and some of them even caught prawns. Now prawns are all that is left in that area.

The situation threatens the economy of that fragile area. All creelers have to make their living out of the prawn fishery now, as there is nothing left to diversify into. Along with the community, I was pleased when the minister arranged to visit the area, to see for himself the problems that local fishermen face. That was the first time that a politician with the power to do something about the problem had listened to the fishermen's concerns. He strengthened the liaison group set up to deal with their problems and, if that does not solve a problem, I will have no hesitation in returning to him to ask for other measures to be taken.

We must listen to the industry and work closely with it to ensure that livelihoods are protected. I am glad that that is happening. We must ensure that we protect the rights of fishermen to fish in areas where, historically, they have made their livings, by working with partners in the north-east Atlantic, Westminster and the European Union.

We have jurisdiction over such issues. We can do something about them and we must spend the time available tackling them. They are extremely important to the fishing industry, more important than a boundary that does not alter the rights of our fishermen to fish and that has no effect on their livelihood.

Alasdair Morgan rose—

Rhoda Grant: I am sorry. I have finished my speech.

The Deputy Presiding Officer (Patricia Ferguson): Alasdair Morgan took us all by surprise there.

16:08

Colin Campbell (West of Scotland) (SNP): On a point of information. I see the Deputy Minister for Rural Affairs is trying to escape, but I ask him not to, as I have here the figures on the number of patrols that have taken place in his disputed waters. There were 29 aerial patrols and 10 surface surveillance patrols. The paper I have says "approximately 29 aerial patrols", which is a mysterious concept.

There was no justification for changing the boundary at the point of devolution. Lord Sewel wrote to Richard Lochhead on 26 May 1999, describing how the new boundary was defined. He said that

"the use of median lines means that every point is equidistant to Scotland and to England . . . The median line approach is the normal international convention".

Henry McLeish used the same words in the Commons debate on the statutory instrument on 23 March 1999.

Unfortunately, that is not the case. Iain Scobbie, who was quoted earlier, refers to a book by Charney and Alexander, called "International Maritime Boundaries", which was published in 1993 and which states that

"of the 30 boundaries delimited between adjacent coasts, only 12, or 40%, follow the equidistant method".

In other words, the method used was not the customary international convention.

Alan Perry of D J Freeman's "Litigation Review" has also been referred to. He writes:

"There is no general rule in international law that equidistance is the proper basis for such a line. A jurisdictional boundary drawn on quite a different basis has existed for hundreds of years—well to the south of the new line."

The matter was debated in Westminster when every political party in Scotland was distracted by the forthcoming Scottish parliamentary elections. The timing and the misinterpretation of the principles of international law indicate an exercise

flawed through haste, if not deliberately flawed.

In a previous debate on this matter last summer, I raised the spectre of the mineral boundary being shifted to the line delineated by the Scottish Adjacent Waters Boundaries Order 1999. Henry McLeish stated in committee that

"the boundary has no significance for other matters . . . In particular, it has no relevance to the regulation of oil and gas exploration and production at sea."—[*Official Report, House of Commons, Third Standing Committee on Delegated Legislation*, 23 March 1999; c 3.]

That is correct—or would be if he had inserted the word "immediate" before "relevance". The fisheries limit has been separated from the hydrocarbons boundary. That is out of step with established international practice, which favours a single delimitation line for fisheries and hydrocarbons. What was done last year is at variance with the 1982 United Nations Convention on the Law of the Sea, to which the United Kingdom subscribes.

Lewis Macdonald: Colin Campbell referred to the United Nations Convention on the Law of the Sea. Will he confirm that that convention states that, in cases where two neighbouring countries seek to establish a common boundary but are unable to do so, the boundary may not exceed the median line?

Colin Campbell: I cannot confirm that. I do not have that amount of legal expertise. Lewis Macdonald is a member of the Rural Affairs Committee; I am speaking as just a backbencher in the context of this debate.

By shifting the fisheries boundary, the seeds have been sown for a future dispute about a single boundary for fisheries and hydrocarbons. It is just possible that, in the interests of administrative tidiness, the UK may revisit this matter and go for a single boundary. I have no objection to a single boundary on the pre-March 1999 limits. Even if the UK does not move the hydrocarbons boundary prior to independence—John Home Robertson recognises that that is what the SNP is about—the fact that the fisheries boundary has already been shifted strengthens the case for a hydrocarbons boundary identical to the fisheries boundary. That will have fiscal implications and consequences for Scotland and England, with Scotland the loser.

In defence, which I think about a lot, plans are made on the predicted shape of war 30 years ahead. For example, the successor aircraft to the Eurofighter Typhoon is already being explored. I refuse to believe that similar political projections are not made by Government experts—if they are not, they should be—and that the boundary change was not brought about with the possibility of independence in mind.

Archy Kirkwood said that he was concerned that

MAFF's grubby fingerprints are all over this issue. I am even more concerned that the Ministry of Agriculture, Fisheries and Food is a bit player in this matter, and that the Department of Trade and Industry, the UK Treasury and their crystal-gazing think-tanks have called the tune on this matter as a pre-emptive measure against the possibility of Scottish independence.

I concluded last year by saying:

"The change . . . is a bit of a pauchle."—[*Official Report*, 3 June 1999; Vol 1, c 247.]

I conclude now by saying it again: this boundary change is suspect. It is flawed in its execution and it has very serious implications for Scotland. It is a UK parliamentary pauchle.

16:13

Mr John Munro (Ross, Skye and Inverness West) (LD): As is clear from the debate, this is still a controversial issue. Fishermen throughout Scotland have found the introduction of the new sea boundary for fisheries off the east coast offensive, to say the least. In the manner in which it was introduced, it was a disaster, and its implementation was a presentational disaster. There was no consultation before the event, nor was there any explanation after it. The fishermen's representatives discovered entirely by accident that the measure had been enacted at Westminster.

The second problem with this measure is that it is illogical. I do not think that it is appropriate to have recourse to an international convention to establish an internal boundary in a unitary state. The way in which the Westminster Government chose to employ the convention was, I say, inappropriate. The convention is sometimes used where two landmasses lie on opposite sides of, for example, inlets, straits or navigable channels. In similar cases, where the border runs more or less at right angles to the coast, the convention is almost never used.

Lewis Macdonald: As an important fact, I point out, in correction, that the convention is used more often than any other method that has been referred to by other members. It was used in 40 per cent of the cases that were cited by an earlier speaker, which is more often than any other method that is used.

Mr Munro: It may be used internationally to control navigation, but seldom is it used internationally to control fishing interests.

Above all, I consider that the matter was unnecessary. There are two existing lines along which the line could have been drawn. I do not dispute the fact that the line was needed—I have always accepted that—but why generate a new

one when one already existed? The fishermen's representatives took their case to the Secretary of State for Scotland, who said that there was a line. The Scottish Fisheries Protection Agency thought that there was a boundary: it used to publish it in its annual report, although I notice that it has not published it in its report this year. Many people thought that there was a boundary already, but we must take the Secretary of State for Scotland's word for it that there was not.

There is, however, another line, a civil jurisdiction line that creates a perfectly acceptable division between the two countries. We have wondered why, in this day and age, and bearing in mind that we are still a unitary state, we need between England and Scotland two borders, which are 60 miles apart. Why not use one line, the original jurisdiction line for offshore activities? I am sure that the fishermen would be perfectly happy to accept that line as marking the division.

As I said earlier, the issue continues to be a running sore for the Scottish Fishermen's Federation. It regards the lack of scrutiny of, and consultation on, the Scottish Adjacent Waters Boundaries Order 1999 as a lasting legacy and failure of the Westminster system. The issue is therefore a test of how well the Scottish Parliament and the Scottish Executive will stand up for the Scottish fishermen's interests.

I recognise that this is a Westminster issue, which should be resolved by the Westminster Parliament, and I hope that Archy Kirkwood's private member's bill will receive the support that it deserves there. However, unless the Scottish Parliament takes up the case of our fishermen and supports their cause on this sensitive issue, we will be giving our political opponents a golden opportunity to claim that we are not truly and sincerely representing Scotland's people, which would be detrimental to the Parliament.

16:18

Cathy Peattie (Falkirk East) (Lab): The Rural Affairs Committee, like many committees in the Scottish Parliament, has had an exceedingly demanding work load. At one stage, our convener was referred to as the fire master, because of all the firefighting that we were doing. Indeed, Lewis Macdonald was even heard to make "nee naw" noises.

As a committee, we have discussed a wide range of issues. As a result of the number of farming issues that have emerged, we are planning an inquiry into agriculture. We have produced a report on shellfishing. We have discussed forestry, crofting, fishing, shellfishing, rural post offices and European funding. Our great debate at the moment is the definition of

community. We have also discussed many other issues. We have a key role in national parks; we are the lead committee on the Protection of Wild Mammals (Scotland) Bill and on the Sea Fisheries (Shellfish) Amendment (Scotland) Bill; and we play a key role in land reform.

The committee went north during the Easter recess, to gather information and meet many people who have an interest in land reform, from crofters to landowners' representatives. We have commissioned a major inquiry into the impact of changing employment patterns in rural Scotland. The inquiry team will be led by Professor Mark Shucksmith, and will gather information from all sorts of groups and agencies throughout Scotland. I am at a loss to explain why those many important issues are not being discussed, and why we have spent the afternoon discussing an issue that is reserved for Westminster.

As Alex Johnstone said, it is less than a year since we last discussed this issue, and, sadly, we have chosen to debate it again when we have an opportunity to discuss issues that could improve the lives of people in Scotland's rural areas. We can make changes that will increase rural employment; we can have land reform to ensure that we know who owns the land in Scotland; we can have national parks that are an asset to this country; and we can have a debate on what constitutes a community. I hope that the next time the Rural Affairs Committee brings a debate to the chamber, we can start to talk about how to improve the lives of people in Scotland, and not simply indulge in political rhetoric.

16:20

Mrs Margaret Ewing (Moray) (SNP): I am disappointed that Mike Rumbles is not in the chamber for my comments on this very important issue. However, as Mr Rumbles and Euan Robson seemed to become interchangeable at one stage in the debate, perhaps Mr Robson can report back to Mr Rumbles.

Mike Rumbles propounded an argument for a consensual approach in this Parliament. Earlier today, we had an opportunity to demonstrate such an approach on a debate on assisted area status, which is an issue that impacts on many rural communities. However, I notice that only Jamie Stone from the Liberal Democrats supported the motion without notice to debate that issue.

Have the Liberal Democrats listened to what one of their own Westminster spokespeople, Malcolm Bruce, said? He believes that the Scottish Parliament should have national autonomy in raising taxation. Liberal Democrats should take that into account and not say that we should hold back on an issue because it is a reserved matter.

We should both make this Parliament work from the grass roots up and make our voice heard.

David Davidson asked a critical question, to which he has not yet received an answer from the minister: how did this situation happen in the first place? Perhaps I can help David. A famous statesman—I am not sure which, but I can find out—said that devolution is designed to stop people meddling in their own affairs. The Parliament should consider that statement. I am determined to meddle in these affairs because they dramatically affect our constituents.

I have to say that the Labour benches have been very poorly attended throughout this debate.

Mr Rumbles: Mrs Ewing advocates meddling in Westminster affairs. How would she feel if Westminster meddled in our affairs?

Mrs Ewing: The trouble is that Westminster meddles far too often in our affairs. My whole point is that we should meddle in these affairs because they affect the livelihoods of Scottish fishermen.

As I said, the Labour benches have been poorly attended this afternoon, and the Executive itself has been aloof in its attitude. The arguments have been very clearly made in this chamber and by the SFF and other organisations that represent fishermen's interests. From letters that I have received from constituents in the north-east and discussions with local fishermen, I know the strength of feeling about the lack of consultation and how this situation came about. Our fishing communities expect us to debate these issues. As Irene McGugan, Richard Lochhead and others have pointed out, not just the catching aspect of fishing but the whole downstream activity is vital for rural employment.

The minister and I know the importance of the fishing industry. We have discussed and debated fisheries issues for many years; in fact, we have probably participated in more debates than people in the chamber have had fish suppers. However, I must ask him whether this issue will be discussed in the inter-Cabinet liaison mechanisms. Is it going to be part of the protocols? Will the matter be discussed at the next Fisheries Council and will the minister be in attendance? Will he take a lead role and will he be voting? Will the attitudes of the Parliament, which have been expressed so clearly by one of our committees—the committees are supposed to be the powerhouses of our Parliament—provide the basis of any recommendation?

16:25

Dr Elaine Murray (Dumfries) (Lab): I have a strange feeling of *déjà vu*, because I am stuck in a debate that keeps repeating itself—a bit like that

film that I have not seen. An inordinate amount of time seems to have been spent discussing the matter, both in committee and in Parliament. As others have said, the debate was reintroduced in the chamber against the wishes of the minority on the Rural Affairs Committee. As Cathy Peattie said, the selection of this topic is slightly puzzling, given that there are so many issues that face rural communities, that would have been worthy of a two-and-a-half-hour debate.

It is not that the adjacent waters boundary issue is unimportant—it is important—or that lessons should not be learned about the lack of consultation with the industry. Those lessons should be learned and I am pleased to hear the minister tell us that they have been learned. However, we seem to be spending a lot of time discussing an issue about which the Scottish Parliament is unable to do anything. It is not a question of meddling in other people's affairs; this is a reserved matter and we have Scottish MPs who are elected to represent our constituents in Westminster. It is the business of those MPs to represent our constituents there.

Alex Fergusson (South of Scotland) (Con): On that basis, does Dr Murray think that we are irrelevant to the issue of the potential closure of rural post offices throughout Scotland?

Dr Murray: We have debated that matter once, as Alex Fergusson knows, just as we have already debated the adjacent waters boundary. My contention is that we keep returning to the issue like a dog to its unfinished dinner.

The nationalist agenda is obvious. As Mr Rumbles said, the issue presents an opportunity to bash the Labour UK Government. That is fair enough—it is what Opposition parties are all about. Perhaps I am less shocked by that than Mr Rumbles is. It also presents an opportunity to stir up anti-English sentiments—

Richard Lochhead: Will the member give way?

Dr Murray: I will finish my sentence before giving way. The use of terminology such as “disputed zones”, and even “stolen waters”, stirs up such sentiments.

Richard Lochhead: Following the member's ridiculous comments, I would like to ask her to confirm that the concerns of the fishing industry are similar to those of the Opposition parties—we all want the boundary to be changed. Is Dr Murray attacking the fishing industry, saying that it is objecting to the boundary for party political reasons in order to attack the UK Government? Does she admit that people in the Scottish fishing industry have genuine and substantive concerns about their ability to do their jobs and earn their livelihood?

Dr Murray: I am not taking any lessons from Mr Lochhead about silly statements. I am not attacking the fishing industry—as I said, the issue is important. What I am attacking is the amount of time that we have spent debating the issue in the Scottish Parliament.

The motivation of the Scottish National party is clear. The motivation of the Tories is less clear cut. The Tories also want an opportunity to have a go at the Labour Government, yet in doing so, they are being rather inconsistent.

Mr Davidson: It is very kind of Dr Murray to give way. Does she not think that a solution to this difficulty—preventing her recurring nightmares—would be to get an assurance from the minister that the Executive will approach the Government at Westminster, find out why the situation occurred in the first place and accept the suggestion of the Rural Affairs Committee?

Dr Murray: That is not what we are debating—we are debating a take-note motion.

Jamie McGrigor has expressed an opinion which is very similar to that given by Irene McGugan today, about the importance of the fishing industry to the Scottish economy. However, the Tories in the House of Commons take a very different view. Indeed, English Conservatives, such as Oliver Letwin and Michael Fabricant, have argued that the eastern part of the line is too far south and should extend further north. Scottish Tories appear to have more in common with Scottish nationalists than with their colleagues at Westminster. What has brought about such a curious meeting of minds?

There is only one situation in which the difference between the fisheries boundary and the civil jurisdiction offshore activities boundary might be problematic, and that is if the nationalists are successful in separating Scotland from the rest of the UK. Again, I can see why the nationalists want to press that agenda, but why should the Tories? The Tories like to portray themselves as the bulwark of the union.

The Solway boundary is a median line. It was not always so. The Royal Navy used to patrol up to Ballantrae. According to Mr Davidson's argument about custom and practice, that boundary should be retained. I am sure that nobody particularly wants the western boundary to go up to Ballantrae again, and that people would prefer it to stay at the median in the Solway. If separation happens, constituents such as mine in Dumfriesshire are likely to have much more to exercise their minds than a line in the sea 12 miles east of the mainland.

I have no problem with the take-note motion, but I feel that we could have better spent two and a half hours debating issues that have not already

been debated, and that really affect the lives of people in rural communities.

The Deputy Presiding Officer: We now move to the winding-up speeches. I apologise to the members who were not called.

16:30

Euan Robson (Roxburgh and Berwickshire) (LD): I say from the outset and for the avoidance of doubt or misrepresentation that I have always supported the case about the boundary line made by the Scottish Fishermen's Federation and by my constituents in Eyemouth and Berwickshire, and will continue to do so. Also, I am not Mike Rumbles MSP.

The SFF was entirely right to complain about the lack of initial consultation about the boundary, a situation that the Scottish Executive has rightly altered in subsequent consultation on this and other fishing issues.

It is important to emphasise that the unalterable fact in the dispute remains that the problem with the new boundary is that it is a problem that can be put right only at Westminster; it cannot be put right anywhere else. For that reason, my colleague, Archy Kirkwood MP, and I decided that he should draw up a bill to set the boundary on a line concurrent with that of the Civil Jurisdiction (Offshore Activities) Order 1987.

Herein lies the difference between me and some of my colleagues. The fisheries minister points out that a formal boundary at sea was never established. Strictly speaking, he is probably—I stress probably—correct. I am indebted to my former tutor, Professor Geoffrey Barrow, lately professor of Scottish history at the University of St Andrews and a world-renowned medieval historian, for his help. His view is that there was no formal treaty or agreement on the line at sea, in marked contrast to the great number of documents relating to the land boundary. Indeed, the exact line on land in places such as Yetholm and Sprouston, in my constituency, was apparently established in early modern rather than medieval times.

However, if there was never a formal agreement, there was certainly a line of custom and practice or repute. Had the civil servants who drew the line taken the time and trouble to ask the practitioners—the fishermen—or the Scottish Fisheries Protection Agency, they would have received a clear answer. If they had bothered to travel to Eyemouth, for example, had stood on the pier and had asked, no one would have pointed north; everyone would have pointed south of the harbour entrance and bar.

The first key point, therefore, is that consultation

would have revealed quite clearly an uncontentious, happily working arrangement or understanding. No one would have objected to its formalisation.

The fishermen's case has been well recorded. There are worries about the legal jurisdiction and about whether alleged transgressions will be tried in England or Scotland. I understand from a letter to my colleague, Archy Kirkwood, from the then fisheries minister, Lord Sewel, that the Eyemouth fishermen refer to the jurisdiction of the Scottish courts, and that is unchanged. He said that in relation to fishing, the current practice is normally to prosecute an alleged offence under the sea fisheries legislation at the court nearest to the place where the offence is detected.

There is no reason for that practice to change. Indeed, John Reid said in a letter dated 15 September to Hamish Morrison that

"it remains possible that an offence may be taken in either a Scottish or an English court. I would not expect a vessel's port of registry to be a major factor in determining where the case was taken."

My understanding is that where a case is heard will depend on the individual circumstances, but we will not find out the definitive answer until there is an unfortunate incident of prosecution.

The main worry is the well-rehearsed point about the Berwick bank fishery. Differing codes north and south of the line could well lead to a loss of economic viability of the fishery if gear has to be changed halfway through a trawl. That point has been made on a number of occasions. With great respect to the minister, it is all well and good to say that that will not happen on his watch—of course it will not—but the minister cannot commit his successors in perpetuity and there is no guarantee that the concordat will be permanent.

A further point concerns guard vessels. That is a lucrative and important activity for Eyemouth vessels, because, on a rota, they protect other fishing boats from sub-sea oil and gas installations. The new boundary must not interfere with traditional arrangements, and it would be a pity if it did.

The existence of two lines at sea—the fishing boundary and the Civil Jurisdiction (Offshore Activities) Order 1987 line—is unnecessary and confusing: a case, as my colleague Ian Jenkins muttered to me earlier, of pouring trouble on oiled waters. Of equal significance to those practical issues is the reinforcement of the general perception held by fishermen of my acquaintance that the boundary-at-sea issue demonstrated that they were not taken into consideration in this heavily regulated industry, and that their views were not given prominence. The Executive has made a major effort to change that perception, and

I welcome that, but that perception is in the background of the dispute.

Richard Lochhead: Given that the Liberal Democrat party in this Parliament supports the scrapping of the new fishing boundary, does the member agree that it would be useful for the Scottish Executive to convey to the Westminster Government that a majority of members of Scotland's Parliament support the scrapping of the boundary?

Euan Robson: Indeed, I do. It would be useful if the Executive did that, and I would welcome it.

I congratulate the Rural Affairs Committee on its work. The way forward is to back today's motion and for us all to get behind Archy Kirkwood's bill, which is scheduled for consideration at the end of July. From the outset, Archy and I have adopted the position that megaphone diplomacy is not the way to achieve our shared objective. We have resisted the temptation to make cheap political capital out of this project. Persuasion is the order of the day, especially when the UK Government has a three-figure majority. I hope that the committee's report will contribute to making progress on the matter.

16:37

Mr Murray Tosh (South of Scotland) (Con):

As I have always said when speaking in fishing debates in the chamber, I do not regard myself as an authority on the fishing industry. I deferred to the minister when he chose to spend quite a bit of his speech on matters that he said were of more pressing concern to the fishing industry, instancing quotas, safety measures, access to fishing grounds, conservation measures and so on. He was clearly correct to dwell for a time on those practical matters. Of course, Parliament has debated those issues and doubtless will debate them again, but I submit that it is entirely proper for us to discuss this issue today, for three reasons.

First, contrary to what the minister said, this matter has been raised on several occasions by the Scottish Fishermen's Federation. I have by no means been in the front line of the debate, but I recall meeting three delegations from the SFF, and I have received several briefing notes from it. This is clearly a matter of concern to the SFF, which it is legitimate for us to discuss. Indeed, Euan Robson rehearsed a number of the points that the SFF has constantly and consistently raised, such as the implications of changing gear halfway through a trawl. That is a point that I have heard raised frequently, but I have never heard it answered. The chamber would be grateful for an answer.

Secondly, the way in which the matter was

debated in June was unsatisfactory. My recollection of the outcome of that debate was that the Parliament was left with the impression that something reasonably vigorous would be done to promote a satisfactory resolution to the dispute. That has not happened, and the Scottish Executive has not played any part in reaching a resolution. If it has, it has been remarkably modest about its input.

Thirdly, important constitutional matters are involved in the alteration of a boundary line between two countries, whether or not they are part of a unitary state. The simple fact is that whether the line was laid down in treaty or was a use-and-wont line, Scotland went into the union in 1707 with a degree of territory and has emerged later as a devolved unit within a unitary state with less territory, having had removed from it a substantial part of its territorial waters without discussion, without debate, without consultation and without consent. That is not constitutionally proper, and it does not accord with the principles on which the Parliament was founded.

A boundary line existed, whether it was statutory or had come to be accepted—the fishermen say that a line has existed since the 15th century, and Mr Robson has just referred to a customary boundary—which becomes a real enough boundary when there is no other. If that boundary is changed and given statutory enforcement, the proposals and their justification must be discussed with the people affected; if that is not done, that is a dereliction.

On several occasions, Mr Lochhead has brought up how the matter was handled at Westminster and has quoted from *Hansard*. We know that many MPs concerned did not know what they were doing—that is indefensible. It is appropriate and reasonable for this Parliament and the Executive to go back and ask whether a mistake was made.

Lewis Macdonald: The member's party is the Opposition at Westminster, and it is appropriate for this Parliament to address our concerns about the matter to Westminster. Will he tell us what the policy of the shadow Cabinet at Westminster is?

Mr Tosh: I am here today to speak for the Scottish Conservatives on a matter that affects the Scottish Parliament, the jurisdiction of which was reduced by the House of Commons, without its consent, on the eve of devolution. I do not believe that that was proper. Mike Rumbles said that he believed that it was a simple mistake, and I think that he might be correct—I hope so. Several members today have argued that the real issue is hydrocarbon boundaries. The Deputy Minister for Rural Affairs can deride that as a conspiracy theory, but if he gives no answer or explanation, what right does he have to deride the explanations

that others insert into that vacuum? The Scottish Executive has given fuel to separatist arguments in the way that it has handled the dispute, because by giving no explanations, it has allowed explanations to be invented.

The minister said some remarkable things this afternoon. He did a lot of scoffing—I do not think that he should, especially when he is saying that he does not know why the change was made. He ought to have made it his business to find out why the change was made and to explain and defend it.

The Deputy Presiding Officer: Wind up, please.

Mr Tosh: I do not think that it is right for the minister to say that it is Westminster's business, not ours. Our boundary was changed—that is a fact.

I take issue with what Mike Rumbles said about my view of devolution. As a lifelong devolutionist, I understood—

Mr Rumbles: That is a surprise.

Mr Tosh: I do not know why the member should say that.

I understood devolution to mean that the Parliament has the right to raise on behalf of Scotland a huge range of issues that are not within its competence. The Executive has made a virtue of the role that it has played in relation to, for example, the fuel duty escalator, the climate change levy and regional selective assistance. We expect that. We ask questions about such things; they are part of our business. But one thing that the Executive will not discuss or explain is the alteration of this boundary. That is anomalous, peculiar and unacceptable. It is contemptuous of Parliament and not awfully respectful towards Scotland. It is a pity that the Executive will not be the champion of Scotland's interests on this matter.

16:44

Dr Winnie Ewing (Highlands and Islands) (SNP): As the oldest member, I would like to say how glad I am to hear that Mr Dewar will be back in his place here tomorrow. He has caused us all a great deal of worry—and excitement, as the press made so much of it. I am sure that he will be well again tomorrow.

The boundary issue is a great fishing mystery. It has the fascination of a detective story. As Murray Tosh has just said, we still do not know why the change happened. We are not given an explanation, so we are left with two possibilities—that it was a mistake or that there is something more sinister behind it.

My party is accused of looking for the sinister, but many members have asked whether it could be admitted that the transfer was just an error and whether, if that is the case, it can be put right. There is much dignity in politicians or parties admitting that they have made an error, and then correcting it. We have all had to do that—certainly, in my long span, I have had to do it.

Why can the Executive not admit that the order was a mistake? The minister's speech today was pathetic because he is as much involved in the mystery as we are and does not know the answers. Should he have been the person to address the chamber, given that he does not even attempt to know the answers?

We have reduced our territory. Has anyone ever heard of a Parliament in its early days taking a decision to reduce its territory? I think that a Conservative member made that point.

It is said that Scottish fishermen still have the right to fish in the area that is under discussion, and that the change makes no economic difference. Are we just materialists in the chamber? Are we concerned only with material considerations? I have an interest in the matter as I was a criminal lawyer—I should perhaps say that I practised in the criminal court extensively for many years, and after I lost my seat at Hamilton, I practised criminal law again. I was also an academic Scots lawyer. I am proud of Scots law because the world respects our criminal legal system. It is one of the jewels of the world's jurisprudence—I do not speak lightly about that and can quote chapter and verse the people who have said that.

There is now doubt about which court a criminal matter in the disputed area would go to. The answer is not clear from what has been said so far—the truth is that nobody knows. It seems that oil will go to Scotland and fish to England. However, are we not concerned with rights in law as well as rights to fish?

Cases that arise might not be concerned only with a fisherman disregarding the law on fishing, and could relate to tanker negligence—there have been incidents such as collisions in my time. If one goes to an English court in such situations, one gets a lesser system of criminal prosecution. I dare any jurisprudence expert to deny that.

Apart from anything else, the transfer is a breach of the Treaty of Union, but nobody cares about that. Obviously, the nationalists care about it—we keep being told that we do, but we do not apologise for caring about the Treaty of Union, which was meant to protect all manner of things in Scotland. It is obviously not protecting Scotland's territory, but one would think that it would protect the jewel in the crown of our law, which is the

criminal legal system.

As John Farquhar Munro said, it is not logical to have two boundaries. Having two boundaries is messy and will cause difficulties. It has been said that there has not yet been a criminal incident in the disputed waters, but there will be. Are we going to wait until all the horror and outrage that an incident will cause makes the Executive admit its error? That is what I foresee will happen.

I asked the same questions in the previous debate: why did the change happen? Was it a show of ignorance? Members on the Westminster delegated legislation committee admitted that they were puzzled and did not know the impact that it would have. It was obviously a mistake. However, if it was not a mistake, and there was a conspiracy, it was a pretty disgusting conspiracy of thieves in the night on the eve of the establishment of our distinguished Parliament. What on earth can the motive have been for that? Was it to increase the English tonnage in the quota at the expense of the Scottish tonnage?

In my presence, during a visit by the European Parliament Committee on Legal Affairs and the Internal Market, Henry McLeish admitted that because fishing in the UK was predominantly a Scottish matter, the Scottish minister would represent the UK in Europe. Was the transfer something to do with that, as if the English and Scottish tonnages were equalised, there would not be the problem of the Scottish minister representing the UK?

Was the motive fear that we were going to win our independence? Was it a warning light? Was it to say, "You have got your Parliament, but we are still the masters, so we will dish you out a dirty trick on the eve of your creation"? That may sound enormously stupid, but as I cannot get an answer to the question whether it was a mistake—the Executive does not seem prepared to admit that and to put it right—one is left with the conspiracy theory.

There is a lot of confusion. We are told that the issue has nothing to do with oil, but we have already heard many members tell us from experience that many fishing boats serve the oil industry. The two industries are not totally separate; there is a mix, as we all know. I know that many of my fishermen friends are out there in boats that serve the oil industry, and a dangerous job it is too.

Mr Johnstone, in his very able speech, mentioned other matters that it is now agreed will be affected. There is confusion, and there certainly was not consultation. The Scottish Fishermen's Federation was in St Andrew's House and found out about this matter by accident. I would add that, at that time, I was the only United Kingdom vice-

president of the European Parliament Committee on Fisheries. Would not members think that, as a matter of courtesy, there might have been some intimation sent to that committee, which was obviously involved in the matter as well?

We all seem to agree that there was some kind of cock-up. Or was it a conspiracy? I do not know—but let us get the answer and put the matter right.

16:51

Mr Home Robertson: There is something intriguing about listening to Dr Ewing and Mr Tosh singing from more or less the same nationalist song sheet—which is what it sounds like to me. It is something that Mr Tosh will have to figure out for himself.

A number of interesting points have been raised. Some have been familiar—Elaine Murray referred to this as the “Groundhog Day” debate. It might come again, although I hope not. Who knows?

Mr Davidson asked a specific question about whether Mr Finnie had written to the Secretary of State for Scotland—he did, and the Secretary of State for Scotland remains of the opinion that the line is in the right place. Mr Davidson also asked a question about patrolling, and I am grateful to Colin Campbell for giving an accurate reply. The area has had both aerial surveillance and maritime patrols. Interestingly, Mr Davidson went on to say—and I agreed with him entirely at this point during his speech—that there are major issues that affect the fishing industry and that we should not waste our time on this one. Amen. I referred in my speech earlier today to a lot of serious issues that affect the industry. We intend to address those issues and to protect fiercely our fishing communities’ interests.

Mr Davidson *rose*—

Mr Home Robertson: I am sorry, I do not have a lot of time.

Irene McGugan and others have tried to raise the question of problems that might arise because of the location of the median line. She said that there were no advantages. I acknowledge that, but neither are there disadvantages. We intend to ensure that at every turn we get the best for our fishermen.

When I intervened during Richard Lochhead’s speech, I asked him to give just one example of a problem that fishermen had experienced as a result of the location of the median line. He said that he would give me an example, but he did not. We are still waiting, but I am not surprised because there is no example to give—no problems have been experienced. I am sure that if problems had been experienced, the Scottish

Fishermen’s Federation and others would have told us about them. Since Parliament assumed responsibilities for our fisheries, there have been three full meetings of the new Scottish inshore fisheries advisory group that I established and, in recent months, there have been frequent meetings between my officials and fishing representatives. On none of those occasions has anybody from the SFF or any other fishing organisation raised the question of the median line.

Richard Lochhead gave a credible imitation of the north-east equivalent of a Philadelphia lawyer, with his list of ways in which different lines can be established and so on. Again, I asked him for just one example of an actual problem—I am still waiting for an answer. There have been no problems.

Some fearsome rhetoric has been used during the debate. Murray Tosh, on the business of shifting the boundary, was probably one of the worst offenders. Cannot he grasp the fact that there was no boundary?

Mr Tosh *rose*—

Mr Home Robertson: No, I have not got time—we have been through this often enough. The fact that Mr Tosh—or anybody else—says that there was a boundary, or cites a map and an appendix to an annual report of the Scottish Fisheries Protection Agency, does not mean that there was a boundary. There was no boundary.

There was also the business about water being stolen by thieves in the night. The new boundary is a median line. It appeared to our colleagues in Westminster that that was the fairest and most sensible approach—it means that the water that is closer to England is in the English fisheries zone and the water that is closer to Scotland is in the Scottish fisheries zone. I was accused a few minutes ago of always taking the MAFF line. My colleagues in MAFF would not recognise that as the truth. We are taking the lead on the management of fisheries in the North sea, especially on conservation. We are working with the Scottish Fishermen’s Federation on the 90 mm square mesh panels, for example. Because we took the lead on that, we were able to get 8,000 tonnes more haddock for our fishermen to catch.

I am glad to see that Alex Salmond has joined us. He was quoted in *The Banffshire Journal* of 29 March as saying:

“Holyrood turns up focus on fishing”.

That is right. We are focusing on fishing—it is a big industry in this country and we intend to take the lead on matters that relate to it. We took the lead in our negotiations with MAFF and in the European Union on the issue that I just mentioned and won our case. We were elected to take the

lead on such matters and we intend to continue to do so. I am part of the British delegation in the European Council and I speak there on behalf of Scottish interests.

We are not discussing a practical issue. If it were practical, the fishermen would have told us about it when we met them. It is a purely political issue and we have had a political debate about it.

I issued a press release on 9 December that said that we took note of the Rural Affairs Committee's report. I am happy for the Parliament to take note of that report. I intend to get on with the business of working for the practical interests of Scottish fishermen.

16:56

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I will not rehearse all the committee's recommendations. Many of them were unanimous and, although I accept that not all were, members should bear in mind the fact that the committee had to come to a conclusion and that there was no point in producing an equivocal report.

The main objector to the boundary line—the Scottish Fishermen's Federation—is still firm in its opposition to the proposal. Statistics indicate that the water that we are discussing is used almost exclusively by Scottish boats. The Rural Affairs Committee talked about the inconsistency of having two boundaries. When the minister came before the committee, I asked him about precedents for the action. He said then that he knew of none, although I accept that he mentioned the precedent of Denmark in his speech today. That is all very well, but it relates only to the fishing boundary. Henry McLeish said in the Third Standing Committee on Delegated Legislation at Westminster that the boundary that is specified in the order that he was discussing did not automatically apply to functions other than fisheries, but that

"it provides an obvious line of demarcation for the exercise of appropriate functions by Scottish Ministers or public authorities in future".—[*Official Report, House of Commons, Third Standing Committee on Delegated Legislation*, 23 March 1999; c 5.]

Therein lies the problem. There is scope for confusion. That is obvious.

In the debate on 3 June, Mr Home Robertson asked:

"As a matter of interest, Madam Deputy Presiding Officer, how long do I have? It is rather complicated, as the clocks are set at different times."—[*Official Report*, 3 June 1999; Vol 1, c 249.]

If two clocks can be confusing, I put it to the minister that two boundaries are even more so.

The minister said that we should not be discussing this subject because there are more important subjects. I remember precisely the same argument being used for many years by the opponents of devolution. They said that we should be talking about the economy and so on, instead of tinkering with the constitution. Even if I accepted that the matter is of no importance, I would not accept that we should not discuss certain matters because they are less important than others. The report is the only one that was available to the committee for discussion and it is appropriate that Parliament should discuss it. If members had wanted to discuss something else, they could have discussed assisted area status, but they chose not to.

We are having this debate as a result of a proposal that was brought forward without consultation, discussed by a committee—some members of which admitted that they were confused—and passed in the chamber without any debate being allowed. That is Westminster democracy in action. [*Interruption.*]

The Presiding Officer (Sir David Steel): Order. Far too many conversations are going on in the chamber. Will members please come to order?

Alasdair Morgan: Perhaps something exciting is about to happen—perhaps the Government is going to push forward with the committee's recommendations.

How did we get to where we are now? Both David Davidson and Lord James Douglas-Hamilton raised that question. Who decided that the boundary should be proposed? What instructions were civil servants given? At no stage has Parliament had an answer to those questions. Was it the case that civil servants in the Ministry of Agriculture, Fisheries and Food dreamed it up, not realising that the Department of Trade and Industry had dreamed up another boundary some years previously? Was it a conspiracy or a cock-up? As a fairly moderate member of my party, I always go with the cock-up theory of politics. There is no reason to change the custom-and-practice line. If we were starting again and if this had not happened, surely we would not now be in this situation. As the SFF—the main non-political objector—is against the boundary we should surely not adopt it. There seems no coherent reason for it.

The minister, in opening the debate on 3 June, prayed in aid the fact that the change was in accordance with what he said was the normal convention of international law, although the SNP disagrees with that. The deputy minister, in writing to the convener of the Rural Affairs Committee on 25 October, said:

"The argument that a median line, as compared to any

other type of line . . . is at variance with international law is therefore neither here nor there."

So, one minister prays international law in aid and the other says that it is of no importance. As I said, we do not know whether the Government got here by conspiracy or by cock-up. However, there is a fairly overwhelming opinion that it has got to the wrong place.

How can we get out of this situation? The Liberals say that we should support—or get the Government to support—Archy Kirkwood's bill in the House of Commons. I realise that they do that because they want to make a party political point. Archy Kirkwood's bill is number 15 for consideration on 21 July. Once the first bill is talked out at 2.30 pm, the names of the other 14 bills will be read out. On each occasion the Government whip will shout, "Object"—and that will be the end of Archy Kirkwood's bill.

The only way in which to get out of this situation is for the Secretary of State for Scotland to introduce a new order. We must press the Executive and the Scottish Parliament to get him to do that. I ask the Executive to intervene with the secretary of state to remedy the situation and get rid of this anomaly. I would not crow about that and I would not say that it was a U-turn. I say that we should get to where we want to be and to where we should have been in the first place. The motion is only a take-note motion. I hope and expect that there will not be a vote on it and I hope that the Executive will respond in the spirit of the committee's report and push forward with the committee's recommendations.

Decision Time

17:02

The Presiding Officer (Sir David Steel): There are no Parliamentary Bureau motions so we come straight to decision time. The only question to put is that motion S1M-752—

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): On a point of order. After the earlier vote on the motion without notice, I received information on the voting, which seems to have been incorrect. I would like to record the fact that I understand that Maureen Macmillan, John Munro and Rhoda Grant all voted for the motion—the information that I received previously was that that was not the case. Secondly, I would like to record that I voted for the motion, whereas I am recorded as having not voted. I thought that it was appropriate to put that on the record.

The Presiding Officer: Those are two distinct points.

On the first point, I understand that the member asked for a copy of the division list. Those lists come out of the machine with numbers and dates on them, but without a title. In error, he was given the wrong one, but the voting list is correct.

The second point is more serious and affects all members. The member is saying that he voted, but that he is recorded as having not voted. I have seen the list, and that is how he is recorded. This has happened before; there are three possible causes. First, a console might be faulty occasionally—Fergus Ewing's will be checked to see whether that is the case; it does not happen often, but it can happen. Secondly, the cards can be faulty as they can get damaged in members' pockets or handbags—that also happens occasionally. However, we have found in the past that the most common cause has been that the card has not been properly inserted in the console.

I am making no—*[Interruption.]* Order. I am saying merely that Mr Ewing should leave his card behind when he leaves—his console and card will be checked to see what happened. He has now recorded his vote by raising the point of order.

We now come to the decision on the motion. The question is, that motion S1M-752, in the name of Alex Johnstone on behalf of the Rural Affairs Committee, on the impact of the Scottish Adjacent Waters Boundaries Order 1999, be agreed to.

Motion agreed to.

That the Parliament notes the terms of the report by the Rural Affairs Committee, The Impact of the Scottish Adjacent Waters Boundaries Order 1999 (SP paper 42), in particular its dissatisfaction and concern about the level of

consultation carried out prior to the introduction of the boundaries order, that the introduction of a boundaries order appears not to have identified any inconsistency with the Civil Jurisdiction (Offshore Activities) Order 1987, and that the amount of fishing activity in the disputed area does not appear to have influenced the Order, and further notes the Committee's recommendation that the Secretary of State for Scotland should either introduce a new, revised Order, or support a Bill calling for a revised boundary proposed in the House of Commons by Archy Kirkwood MP.

The Presiding Officer: That concludes decision time.

Environmentally Sensitive Areas

The Presiding Officer (Sir David Steel): We come now to the members' business debate on motion S1M-632, in the name of Tavish Scott, on the environmentally sensitive areas scheme.

I hope that members will be sensitive to the fact that a debate must still take place, and will leave quietly and quickly if they do not want to take part in it. The debate will be concluded after 30 minutes without any question being put. I invite members who want to take part in the debate to press their request-to-speak buttons as soon as possible so that we know who would like to speak.

Motion debated,

That the Parliament notes that crofters and farmers in Shetland have heavily subscribed to the Environmentally Sensitive Areas scheme; notes that those producers who entered the scheme before July 1998 were subject to a different set of scheme regulations in relation to stock disposal than those who entered after that date; further notes that the Scottish Executive have already stated that they are not minded to recover double payments under agri-environmental measures, and therefore believes that crofters and farmers should not suffer financial disadvantage through no fault of their own. **R**

17:06

Tavish Scott (Shetland) (LD): I hope that my console will work properly while I deliver my speech.

I begin by registering an interest. I have an environmentally sensitive area plan on my own farm at home. I also admit to a sense of guilt today. While everyone else is working hard at the lambing, I am here pontificating about a matter that is important to a number of crofters and farmers in Shetland but not, happily, to my own unit, where, as the minister will be pleased to hear, the ESA is working extremely well.

Shetland's environmentally sensitive area is a success story. The current extension caused by the delay in introducing the countryside stewardship scheme creates a further welcome window of opportunity for new crofters and farmers to enter the existing ESA scheme. Some 700 producers are now part of that scheme in Shetland. Out of 1,100 agricultural units, that represents a notable step forward in recognising the importance of the principle that underlies ESAs. The scheme covers a large percentage of the Shetland flock and a large acreage of agricultural land in the islands.

I wish to discuss a small factor of the ESA scheme in the chamber this afternoon—I have initiated this debate to raise the change of rules by the Scottish Executive rural affairs department

regarding the use of sheep quota by producers in Shetland under the ESA scheme.

The original advice to producers, based on the department's rules when the scheme began, was that all parties understood that quota freed by the stock disposal element of the ESA scheme could be used to cover other eligible sheep on a croft or farm. Rules expressly stating that were given to producers who signed up after 22 July 1994. Indeed, the letter from the then Scottish Office agriculture, environment and fisheries department in November 1994 quite clearly states:

"If you have signed and lodged an application form for an Environmentally Sensitive Areas Scheme . . . before 22 JULY 1994 you may lease out quota throughout the lifetime of your scheme."

In the past year, because of reinterpretation of those rules, which Ross Finnie has explained in answer to questions from Alex Fergusson and in letters to members of all parties, the rules have been amended. Producers are now not entitled to lease out quota or claim sheep annual premium on other female sheep on the croft or farm. I am glad that the mistake has at least been recognised; that is progress. Crofting colleagues of mine who are many years older than I am have suggested that it is the first time that the department has admitted getting something wrong. That is welcome and the minister is to be congratulated on making that progress. The agriculture community recognises that.

One of my constituents, a crofter who is affected by the change of circumstances, has asked me to suggest to the minister the introduction of a new scheme. He said in a recent letter to me:

"If the agreed payments cannot be made under the ESA scheme, then surely—with a little bit of imaginative thinking—a way can and must be found to compensate crofters and farmers for their loss, even if no EU funding is available for such compensation".

He went on to suggest that it could be called the official error compensation scheme. I do not know whether the minister would be prepared to take up that helpful suggestion from one of my constituents.

Alex Fergusson has cases of this difficulty in his region; if I understand it correctly, the cases are broadly to be found in the northern isles and in south-west Scotland. In Shetland, 29 producers are affected; on the telephone last night I spoke to one who will lose approximately 90 units at £35—about £3,150.

From correspondence with the minister on this matter, I understand that the industry will lose about £41,000 because of mistakes that it has to be stressed are in no way the responsibility of the crofters or farmers who have been affected. That, in a nutshell, is why those who are affected feel

especially aggrieved. I would like the minister to recognise that, as the mistake is that of the department, a mechanism should be found to ensure that producers are not financially disadvantaged.

The minister will be aware of the impending case, backed by legal opinion, being sought by the National Farmers Union on behalf of one of its members. I would like to raise the actions that have been taken, because it is important to consider them. The time scale that the rural affairs department has operated under has not always helped producers to make informed decisions in pursuing this matter.

The minister rightly asks for the industry to behave in a thoroughly modern, businesslike fashion. To do that, we must have consistency in the application of the department's rules and schemes. It is difficult to do that when advice has conflicted, when time scales demanded for answers to potentially difficult questions are short and when information asked for by crofters to allow those informed decisions to take place—based, for example, on advice by the Scottish Agricultural College, the Farming and Wildlife Advisory Group or other organisations who give advice in this area—takes months to arrive.

Difficulties have been created by the way in which this has been handled. To illustrate the time scale, the first information letter to producers saying that there was a problem arrived on 2 July last year. It intimated that—hopefully—within eight weeks, there would be further advice to producers. Nothing happened until 25 January this year, when a letter was sent to affected producers, setting out the position. I remind members—those who are aware of the circumstances will know this—that that was only a matter of days before the Friday 4 February cut-off for the application for sheep annual premium and hill livestock compensatory allowances.

The time scale given to crofters and farmers who were affected was especially short and, in some cases, very difficult. Someone said to me on the telephone last night that they received the letter on the Tuesday, but had to have their SAP and HLCA claim in on the Friday. That is demanding in anyone's estimation; in the days available, they had to make a best estimate of what they would do with their ESA.

There were problems with trading, leasing in or purchasing quota to cover eligible female sheep. For Shetland, that is complicated by the fact that the nearest available place in which to trade quota is Aberdeen Northern Marts, at Thainstone. To do that, one has to exchange letters; there are practical issues there that are not easy to conclude.

The ESA is a good use of agri-environment moneys; I would like it to continue. The competitive structure being considered for future agri-environment support is not necessarily the best way forward because, as many farming and crofting organisations have pointed out, it is difficult to compare a croft in Walls in the west of Shetland with a larger farm in south-west Scotland. There are concerns about that. I suggest to the minister that, in the areas in which they have been available, ESAs have been a good, useful mechanism for providing agri-environment support for crofting and farming.

The manner in which some producers are being treated is causing disquiet. Potential applicants—there are quite a number in Shetland at the moment, simply because the window has been extended—do not know what to expect. I hope that, in his summing up, the minister will give an assurance that there will be no more rule changes that will disadvantage people. That point was made when I met some union representatives and the SAC the other day, before I came south; I was asked to pursue the matter today.

I press the minister for a review of the 29 outstanding cases in Shetland. I would like him to ensure that not one of those crofters or farmers is financially disadvantaged because of the treatment of their case.

I welcome his announcement that the department will consider claims from producers for losses caused as a consequence of the scheme guidance issued by the department. That is an admission of the mistake and an attempt to set a solution in progress. That is welcome, but the department is still judge and jury and, given the circumstances and the history, some producers will obviously have a concern about that. I hope that that concern can be allayed.

I understand the constraints and difficulties with regard to state aid rules, but I urge the minister to find a mechanism to help producers who, through no fault of their own, are in financial loss.

17:15

Alex Fergusson (South of Scotland) (Con): In declaring an interest, may I say that even when I was a working farmer, I did not participate in any of the schemes that I may mention during my speech this evening.

First, I congratulate Tavish Scott on securing the debate, which will allow us to highlight some of the issues that are of grave concern to farmers and crofters not just in Shetland, but throughout the country, who are faced by some of the toughest times—in economic terms—that they have ever experienced. Frankly, it is shameful that only three of the five—sorry, six—political parties that are

represented in the Parliament are here tonight. Robin Harper will be pleased that I included him.

I am like most rural MSPs, I am sure, in that issues relating to the double payments anomaly started hitting my desk last autumn. Rarely at that time did any agricultural meeting go by without someone speaking to me of their difficulties with their participation in one scheme or another. I accept fully that the double payments issue, relating to the regulations on stock disposal, was the result of a misinterpretation of those regulations by the Scottish Office agriculture department, as it was then.

I also accept that the minister, by intimating that he does not intend to seek repayment of such double payments, has shown understanding of the situation, in that no double payments were the result of false or fraudulent claims and all claimants who were caught in the double claims trap were under the impression—given officially in writing in some cases—that they were perfectly entitled to use quota that was freed up by the reduction in stock numbers to claim subsidy for other stock that was previously not covered by quota. Indeed, that fact alone may well have made the difference for some entrants between applying and not applying for a scheme.

Members can imagine the upset that SERAD—as the department had become—caused when it sent out notification that such claims could not be allowed. Sometimes, as Tavish Scott said, it is gratifying to discover that officialdom can make mistakes and admit to it and, to a degree, one can accept that if it is handled properly. However, I must make strong representations that this business has not been handled well and has increased greatly the frustration and hardship of some of the farmers and crofters involved.

A farmer who wrote to me and on whose behalf I had considerable correspondence with the minister—he will know who the farmer is—and with SERAD officials, who were extremely helpful, had success, ultimately; I am delighted to report that. However, that farmer received his first notification that there was a problem with his claim under the countryside premium scheme on 22 June 1999.

In that letter, the SERAD official stated that he would endeavour to get back to the farmer within eight weeks of the date of the letter—14 June—to explain matters further. The reply from SERAD arrived, eventually, on 24 January 2000. Can it be right that it took seven months—never mind eight weeks—for the farmer to receive that reply, despite his sending a recorded delivery letter to the minister on 23 December, to which he has yet to receive a reply? That is not right, and is symptomatic of something very wrong in the relationship between SERAD and its agricultural

clients—a relationship that appears to be deteriorating as time goes by.

I will quote from a letter from another farmer, from south-west Scotland, who wrote to me as a member of the Rural Affairs Committee. He said:

“May I recommend that your committee enquire into SERAD’s relationship with its clients. I would sum it up politely as an attitude problem.”

Perhaps I was fortunate that I farmed in an era when my relationship with the department—as we always called it—was one of mutual respect and helpfulness, within reasonable parameters. Sadly, those days appear to have gone and it will be much to the detriment of SERAD officials and the individual farmer if respect and helpfulness are replaced by suspicion and obstruction. That would appear to be almost inevitable when one looks at the farce of the agricultural business improvement scheme, the shambles of some of the agri-environment schemes and the current non-availability of the farm woodland premium scheme.

The only conclusion that I can come to is that SERAD is in a mess procedurally and that that is affecting its performance and that of those whom it exists to serve—its clients. I make no accusations against individuals, who have been helpfulness personified in trying to assist the people who have written to me, but I urge Ross Finnie to look into the concerns that have been expressed, to find out what is wrong and to take measures to put things right. That would be to everybody’s benefit, not least the minister’s. I support the motion.

17:20

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I rise not as a farmer but as a constituency MSP who has been approached by farmers in Ettrick and Yarrow in particular.

People have a real sense of injustice when rules are changed and goalposts are shifted, especially over a short period. When that happens, there is not much that people can do about it and their carefully laid plans run into difficulties. That is particularly true at this time, when the whole rural economy is extremely fragile. As we know, the margins sheep farmers are working on are critical. This seems to be another blow when people are at their most vulnerable.

Tavish Scott and Alex Fergusson have gone into the details of this issue in a way that I cannot match. Where farmers are concentrated in a small area, as in the Borders valleys, developments of this kind are critical to the whole rural economy. I am grateful to the minister for acknowledging errors that have been made in the past. His willingness not to exact double payments is vital. I ask him to do whatever he can to ensure that this kind of thing does not happen again, that there is

better consultation between the farmers and the authorities and that there is warning of such developments.

17:22

The Minister for Rural Affairs (Ross Finnie): I welcome the opportunity to respond to Tavish Scott on this issue, which has caused a considerable amount of angst—although, as Alex Fergusson noted, many of those who have claimed on other occasions to be most concerned about it do not appear to be displaying that angst here, which seems rather odd.

I want to emphasise two things. First, I hope that I have made it clear that I regret very much the position that some of our producers find themselves in, through no fault of their own. Secondly, this is now a legal issue—which I regret—and not just a matter of funding. I recognise that many members, including Tavish Scott, Alex Fergusson and Ian Jenkins, have raised this issue and that it is a topic of concern. I want to make it clear that the Executive is alive to that and that we have no wish to disadvantage producers financially.

Tavish Scott claimed that there were difficulties in getting the forms in between 25 January and 4 February. He may be aware that the department has agreed to accept sheep annual premium claims that can be adjusted later without penalty. I hope that that is of help to him.

Alex Fergusson talked about the relationship between officials in SERAD and the farming community. He will be aware that the integrated administration and control system red tape review raised concerns that the relationship had broken down. I have indicated that I am anxious to rebuild it.

I am bound to say that I think it is extremely unfortunate that the European Union framework has turned people in my department into policemen, instead of officials who are genuinely interested in helping the farming community. I have indicated to officials—the vast majority of whom welcome this—that their role is to act on behalf of and in co-operation with farmers. I hope that we can quickly resume that kind of relationship.

Reference was made to a state of collapse, which is perhaps a slight hyperbole. The difficulty we are having with the European Union in agreeing the revised regulations, which is putting a stop to the farm woodland grant scheme, for example, is a matter of deep regret, but I am not able to accept that that difficulty is entirely the responsibility of my department.

John Scott (Ayr) (Con): Am I correct in saying

that ESA payments have been capped in Scotland for a long time—I am not certain whether that still happens—while they were not capped in England? If that remains the situation, will the minister take action to rectify that situation?

Ross Finnie: It would be wrong of me to give an answer off the top of my head—it is dangerous for ministers to do that and I will not do so. I will respond to John Scott's question in detail when I have investigated the matter.

John Scott: I am grateful.

Ross Finnie: As Tavish Scott said, the original interpretation of the scheme was that the regulation would put a prohibition on the use of quota rights as a result of stock disposal in an agri-environment scheme. The department's original interpretation of that requirement was that the bar, as Tavish said, was only to lease or sale of the quota rights and that freed quota rights could be used to claim SAP. We are all agreed on that point.

I regret to say that that interpretation, which was before my time, was erroneous: the prohibition on the use of quota rights extends not only to lease or sale but also to the use of those rights to claim SAP. In short, a proper interpretation of the rules shows clearly that one cannot receive agri-environment stock disposal payments and SAP payments utilising units of quota that ought to have been frozen. I think that we agree that fact, although it is to be regretted.

The stock disposal element has affected 121 producers in Scotland, 29 of whom are in Shetland, who have received double payments. The total value of those payments amounted to just under £400,000. I accepted in good faith from the outset that the producers acted in good faith. We have told them that the decision is not up to me—I am glad that that fact has been recognised. If it were left to me, I would not be seeking any recovery of the payments.

I greatly regret that the EU has decided that the situation might be one of state aid and therefore, unfortunately, I am in its hands. I repeat: I am not minded to seek any recovery from our producers.

Alex Fergusson: On that point, can the minister give an idea of the time scale in which a decision might be reached?

Ross Finnie: I continue to press the point almost weekly. I hope that a decision will be made soon. While I cannot give a precise date, I have made it absolutely clear to the EU that this is nonsense, as the situation involves a small sum of money and it would be completely wrong for us to recover payments in the circumstances in which we find ourselves. That is as far as I am able to go today.

We have given producers the option of continuing with their agri-environment stock disposal option, which will require the requisite number of quota rights to be frozen, or of withdrawing without penalty. The vast majority of producers—95 per cent—who have responded have indicated a preference to remain within the agri-environment scheme. In Shetland, 100 per cent have chosen that option.

I recognise that the withholding of payments that were expected in 1999 has caused hardship in many areas. However, I regret to say that once the issue had been resolved and the legal position clarified, the rural affairs department would have been acting illegally if it had continued to make those payments. That option is not open to me, but I say to Tavish Scott that we are not aware of any other regulation that has been misinterpreted in this way, so I am not aware of any other scheme in which we would have to issue a similar revamped interpretation of a regulation's intentions.

On 17 February, I announced to the chamber that the Executive would consider claims for compensation from individual producers who could demonstrate that their business had suffered a loss through following the department's guidance. As Tavish Scott indicated, the NFU in Scotland has advised its members to seek the assistance of farm advisers in drawing up claims. Indeed, I believe that a claim is being prosecuted. I assure members that those claims will receive sympathetic and, I hope, swift consideration. If those claims are taken further, the matter may go outwith the hands of my department. We still recognise, however, that compensation may be payable. Where our inquiries have established that all, some or part of the expected 1999 stock disposal payments can be made, that is now being done.

A number of producers have suggested that they be allowed to repay their 1999 SAP payments and receive the agri-environment stock disposal payment instead. I am sympathetic to that, and we are seeking to establish whether such an approach would be legal.

We will consider in the light of advice what the implications for the future operation of the SAP scheme might be. I regret not having that advice now, but I am hoping to receive the final advice within the next two to three weeks. It was a matter worth pursuing and I am extremely sympathetic to the point that has been raised in this debate.

This is a matter of real concern to the individual producers concerned and, as Alex Fergusson said, it could not have come at a worse time for those engaged in the sheep sector. Complex issues remain to be resolved, but I can only say that we have no wish to cause financial

disadvantage to producers, which would be through no fault of their own. I will use my best endeavours to persuade the EU that it would not be appropriate to pursue recovery action.

We are committed to dealing promptly with compensation claims and I can assure the chamber that I will continue with the Executive's efforts to secure an outcome that is fair and equitable to all concerned, but within the legal parameters that we must all respect.

Meeting closed at 17:31.

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