ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 3 March 2004
(*Morning*)

Session 2

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

7th Meeting 2004, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

*Roseanna Cunningham (Perth) (SNP)
*Rob Gibson (Highlands and Islands) (SNP)
*Karen Gillon (Clydesdale) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Janis Hughes (Glasgow Rutherglen) (Lab)
Jim Mather (Highlands and Islands) (SNP)
Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Ted Brocklebank (Mid Scotland and Fife) (Con)
Dennis Canavan (Falkirk West) (Ind)
Bruce Crawford (Mid Scotland and Fife) (SNP)
Mrs Margaret Ewing (Moray) (SNP)
Richard Lochhead (North East Scotland) (SNP)
Stewart Stevenson (Banff and Buchan) (SNP)

THE FOLLOWING GAVE EVIDENCE:

Ewen Milligan (Scottish Executive Environment and Rural Affairs Department)
Alastair Sim (Scottish Executive Environment and Rural Affairs Department)
Jim Wildgoose (Scottish Executive Environment and Rural Affairs Department)
Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone
Roz Wheeler

LOCATION

The Chamber

Scottish Parliament

Environment and Rural Development Committee

Wednesday 3 March 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:02*]

Nature Conservation (Scotland) Bill: Stage 2

The Convener (Sarah Boyack): Good morning. I welcome to the meeting committee members, members of the public and press and the Deputy Minister for Environment and Rural Development and his team. I have received no apologies. I remind everyone to turn off their mobile phones.

Agenda item 1 is consideration of the Nature Conservation (Scotland) Bill at stage 2. This is our last go at the bill. I invite members to declare any relevant interests.

Alex Johnstone (North East Scotland) (Con): I declare the usual interests. I am a landowner and a member of the Scottish Landowners Federation.

Rob Gibson (Highlands and Islands) (SNP): I am a member of the Scottish Crofting Foundation.

Mr Alasdair Morrison (Western Isles) (Lab): I am a landowner, but I have only a humble croft on the Isle of Lewis, and I am a member of the Scottish Crofting Foundation. Why do we have to declare our interests every single week?

The Convener: Because the standing orders require that we do so.

Everyone should have the relevant paperwork. The clerks have spare copies of the bill, the marshalled list of amendments and the groupings, should members need them. As in previous stage 2 meetings, I shall call every amendment in strict order from the marshalled list. The amended bill will be published after we have whacked through it today.

Before section 52

The Convener: The first group of amendments is on protection of fossils. Amendment 246, in the name of Maureen Macmillan, is in a group on its own.

Maureen Macmillan (Highlands and Islands) (Lab): As the committee knows, I have been concerned for a long time about the protection of our fossil heritage. Concerns about depredation of our fossils were raised with me first by members of the Caithness fossil group, who told me about the important fossil sites that unscrupulous private dealers were raiding—the dealers sometimes came from abroad. Those concerns were reinforced by the evidence that Professor Crofts gave to the committee. I had hoped to lodge an amendment that would provide for sanctions against such irresponsible collectors, but it became apparent to me that although some palaeontologists agreed with that, many others did not because they believed that it would hamper the development of genuine interest in fossil collecting. I have therefore lodged an amendment that would ensure that Scottish Natural Heritage would, in consultation with palaeontologists, produce strong guidelines on fossil collecting, which would be advertised and promoted strongly. I hope that the Executive will accept amendment 246. I also seek reassurance that the Executive will keep a closer eye on our fossil heritage through SNH. Should amendment 246 be accepted, I would ask the Executive to assess whether the proposed guidelines will address the problem and, if not, to consider further strengthening the law.

I move amendment 246.

The Convener: We have tracked the issue of fossils through since stage 1, so I know that everyone is briefed fully on it.

The Deputy Minister for Environment and Rural Development (Allan Wilson): Amendment 246 is a good amendment which, I am sure, everyone who has an interest in geology and fossils will welcome. Maureen Macmillan is to be commended for lodging the amendment; she has made great efforts to raise the profile of geological interests in the context of the bill and beyond, for which she deserves our thanks.

It is inevitable that geological interests often get overshadowed in a bill of this nature, in which the emphasis is on wildlife and the wider environment. That is unfortunate and we should not forget that the science of geology was in many key respects a Scottish innovation, given the great contributions that Scots such as James Hutton, Charles Lyell and Hugh Miller made to scientific advance in the 18th and 19th centuries. Right here in the heart of Edinburgh, we have a site of special scientific interest in Arthur's Seat, which is in the convener's constituency and which is important not only for its geological features, but as one of the earliest sites of Hutton's archaeological investigations.

We are all in favour of amendment 246 and we take seriously our geological heritage. Maureen Macmillan advanced a convincing case for the development by SNH of a Scottish fossil code as a means of providing important advice and information to everyone who has an interest in

fossils. In combination with measures in the bill, such as improved protection for SSSIs, the code will make a genuine contribution to ensuring that our fossil heritage is respected and safeguarded for the future. I am happy to support amendment 246.

The Convener: Thank you for that and for the advert for the interesting SSSI on my patch, which I have visited.

Maureen Macmillan: I am grateful that the minister supports amendment 246. It has taken a long time for me to get this far, because I have tried to have similar amendments agreed to during the passage of previous bills. I am really delighted that the provision that I have suggested will now become law. Given that the minister mentioned Hugh Miller, perhaps he would like to visit his cottage on the Black Isle to see the fossils that were discovered two centuries ago.

Rob Gibson: The fossils were stolen.

Amendment 246 agreed to.

Section 52 agreed to.

Section 53—Crown application

The Convener: The second group of amendments is on Crown application. Amendment 247, in the name of Dennis Canavan, is in a group on its own.

Dennis Canavan (Falkirk West) (Ind): Thank you for allowing me to address the committee. Amendment 247, which would amend section 53, refers to line 8 on page 30 of the bill and would remove the words:

"but not Her Majesty in her private capacity".

Under section 53, the provisions of parts 1, 2 and 4 would apply to Crown land but not to land that is owned by Her Majesty in her private capacity, for example Balmoral estate. I am not a regular visitor to Balmoral: I have not been a guest of Her Majesty at Balmoral nor, indeed, at the Bar-L or anywhere else, but I have occasionally walked on Balmoral estate and I have climbed Lochnagar, which was a memorable experience that I strongly recommend. It affords breathtaking views of some of the most outstanding natural environment in Scotland, indeed, in the world. It seems to me, therefore, that it would be anomalous to exclude such land from the provisions of parts 1, 2 and 4 of the bill.

Members who were on the Rural Affairs Committee in the last Parliament may recall that there was a similar exclusion clause for Balmoral in the original draft of the Land Reform (Scotland) Bill, but the Executive—and, I presume, the Queen—were eventually persuaded to accept an amendment of mine that extended the right of access to land that is owned by the Queen in her personal capacity. In the interests of consistency, I hope therefore that the Executive and the Queen will accept amendment 247.

Part 1 of the bill refers to a duty of every public body and office holder to

"further the conservation of biodiversity",

and to the designation by ministers of a Scottish biodiversity strategy. Balmoral estate is part of Scotland—there is therefore no justification for its exclusion from a Scottish biodiversity strategy.

Part 2 of the bill refers to a duty of Scottish Natural Heritage to notify landowners if their land is considered to be of special scientific interest, and to specify

"acts or omissions which appear to SNH to be likely to damage"

any aspect of natural heritage that is of such special interest. Under the bill as drafted, if Scottish Natural Heritage considered Balmoral estate, or any part of it, to be of special scientific interest, SNH would be unable to use the notification, designation and site management provisions of part 2 of the bill, and ministers would be unable to make orders under part 4 of the bill.

I understand that some kind of concordat exists, or is proposed, between the Queen and Scottish Natural Heritage to ensure that Natura sites—that is, European Union-designated sites, including special protection areas and special areas of conservation—are voluntarily managed in a way that complies with European Union requirements. However, if a piece of land that is owned by the Queen met the criteria for a site of special scientific interest, but was not designated by the European Union as a Natura site, it would not, apparently, come within the terms of that concordat, which will leave a considerable loophole in the legislation. As I said, Balmoral estate contains some of the most outstanding natural environment in Scotland; the Scottish Parliament has a duty to conserve it, instead of just leave that to the discretion of the Queen or her factor.

I believe that there is in English law no distinction between the Crown as an institution and the person who wears the crown, but in Scotland there is such a distinction. It is wrong for the Executive to use that distinction in such a way that the legislation would bind every landowner in Scotland, including the Crown, but not Her Majesty in her private capacity. We cannot have one law for the Queen and another law for every other landowner in Scotland. As I have told Parliament on previous occasions, Scotland's mountains, lochs and glens are not merely the property of royalty or other landed gentry; they are part of Scotland's natural heritage—part of our natural

heritage—and Scotland's Parliament must recognise that. I ask the committee to accept my amendment 247.

I move amendment 247.

10:15

Mr Morrison: The first observation that I have to make is that it is an absolute outrage that Her Majesty the Queen has not invited that most decent of citizens, Comrade Canavan, to Balmoral. I hope that next time the minister meets Her Majesty, he will raise that on Mr Canavan's behalf.

On the serious point that Dennis Canavan cogently argued, I am minded to support the position that he outlined, although I am not in a position to respond in any way to the detail that he laid out—I hope that the minister will do that at the end of the discussion. I recall Dennis Canavan's contribution to the debate on land reform during the previous session of Parliament, when this issue was addressed, and the amended provision is now part of the historic Land Reform (Scotland) Act 2003. With those few words, I intimate that I am minded to support the position as outlined, subject to further contributions from other members, and I await a detailed response from the minister.

Roseanna Cunningham (Perth) (SNP): For the purposes of consistency, the issue that Dennis Canavan raised in respect of the Land Reform (Scotland) Act 2003 is important. If we enshrine a principle in one piece of legislation, we should carry it through in others—otherwise, we run the risk of creating strange anomalies. It seems a little odd to put landowners into completely separate categories by virtue of their particular status rather than by virtue of any consideration that is central to the bill, such as the land or the natural heritage that they own. I, too, will support the amendment.

Rob Gibson: I have had some dealings with the factor at Balmoral and I recognise the difference between the conditions that relate to SSSIs on Invercauld estate, which is nearby, and the so-called gentleman's agreement at Balmoral—there is an anomaly. It is important that the Nature Conservation (Scotland) Bill take into account the primacy of Scots law, under which the Crown and Her Majesty are separate legal entities. For consistency's sake, we should support Dennis Canavan's amendment, which I will have pleasure in doing.

Karen Gillon (Clydesdale) (Lab): I, too, am minded to support the amendment and I would be grateful for clarification of why the minister deems it necessary for the Queen to be outwith the scope of the bill, given that the Crown Estate is within its scope. I do not think that it will do anything for Her Majesty to be excluded. I am interested to know the rationale behind the decision.

Allan Wilson: I, too, remember the debate with Comrade Canavan in relation to access provisions in the historic—as Alasdair Morrison said—land reform measures that we pressed through in the previous session. On that occasion, I was happy to agree with Dennis Canavan on the importance of the Deeside hills to walkers such as himself, and to climbers—it is a beautiful part of the country. However, this is a different issue and it is not as straightforward as the debate that we had last time on the importance of public access to Lochnagar.

I want to correct a couple of things that Roseanna Cunningham and Dennis Canavan said. The provision that appears in the bill is not something that we have introduced; rather it will simply preserve an existing arrangement from more than 20 years ago, which reflects the thinking that prevailed at that time. In that regard, contrary to what Dennis Canavan said, there is no difference in law between Scotland and England.

The exception in section 53(1) of the bill preserves an existing position. Balmoral, as Dennis Canavan said, is not currently covered by SSSI designation, and I am not aware of that being a particular problem. What I can say in response to Karen Gillon's point, however, is that the palace has asked me to stress that it did not ask for the exemption that appears in the bill. As a matter of general principle the Queen, in her private capacity, is not looking for special treatment on such matters. Balmoral estate has a good story to tell, the palace would argue, in relation to issues such as conservation and public access, which we have discussed. The estate is keen to emphasise that positive story and does not want to become embroiled—nor do I—in a negative debate.

Neither the Executive nor the estate would want people to think that anyone had anything to hide or that the estate does not want to play a full part in nature conservation and in conserving our natural heritage. There are, however, problems associated with passing amendment 247 in a different context, and I ask Dennis Canavan to seek to withdraw the amendment so that the Executive can lodge an amendment at stage 3 that will clarify any concerns about provisions in other parts of the bill in respect of Balmoral estate. If Dennis Canavan is happy with that, we will lodge an amendment to introduce the protection that he seeks for Balmoral, as for any other part of Scotland.

The Convener: Before we go back to Dennis Canavan, I would like to clarify something. Are you saying that you agree with the policy intention of Dennis Canavan's amendment but not with the

technical way in which he has drafted it? Are you committing yourself to coming back at stage 3 to deliver the policy intention that Dennis has outlined to us this morning?

Allan Wilson: Yes—that is precisely correct. Against the amendment is the fact that, for example, the compulsory purchase provisions in the bill could not be applied to Balmoral. That would be outwith legislative competence, so it is a question of tidying up aspects such as that. However, I accept wholly the principle on which the proposition is based.

The Convener: Thank you for that clarification. I invite Dennis Canavan to wind up the debate.

Dennis Canavan: I listened carefully to what the minister said. He said that he was happy to agree with me during the passage of the Land Reform (Scotland) Bill about the right of access to land that is owned by the Queen in her private capacity. It therefore seems to be rather inconsistent that he disagrees with me on the duty to conserve land that is owned by the Queen in her private capacity. When the Land Reform (Scotland) Bill was being considered, the original argument that was put up by the Executive and by some of the people who opposed my amendment was that there were security reasons for not giving the public the right of access to Balmoral. However, even the Queen and her factor were eventually persuaded that there was no real security threat at all, so they went along with my amendment.

The wording of amendment 247 is virtually identical to the wording of the amendment to the Land Reform (Scotland) Bill that was accepted by Parliament in the previous session, so I cannot agree with the minister's conclusion. He says that this is a different case, but he is unable to explain what is different about it. Perhaps he can tell the committee whether there have indeed been any recent communications between the Executive and the Queen or her representatives about any royal objections to the amendment.

The minister says that the provisions in section 53 will preserve an existing arrangement whereby Balmoral is not covered by SSSI designations, but he has not explained why we should simply continue with the status quo. The purpose of the bill is to alter the status quo in order to increase the possibilities and opportunities for conservation of Scotland's natural heritage. It may well be true that Balmoral has a good story to tell, but in years to come there might be a change of factor or a change of arrangements. I dare say that other landowners in Scotland also have a good story to tell about their voluntary conservation efforts, but why should the bill bind every landowner in Scotland, including the Crown Estates, but not the Queen in her personal capacity?

The minister said that there was nothing to hide, but there was something lacking in his attempt to justify his opposition to my amendment. He asked me to seek to withdraw amendment 247 in favour of the possibility of an Executive amendment's being lodged at stage 3, but I have never been in the business of buying a pig in a poke. I do not know whether the Executive amendment will cover the terms of amendment 247.

I simply did not understand the minister's reference to my amendment's being outside the legislative competence. Was he hinting that Parliament does not have the competence to accept my amendment? I very much doubt that that is the case. I doubt that the distinguished clerks of the committee would have accepted my amendment for debate if they thought that it was outside Parliament's legislative competence. If my amendment to the Land Reform (Scotland) Bill in the previous parliamentary session was competent, amendment 247 must also be competent.

I ask the committee to agree to amendment 247.

The Convener: Do you want to press amendment 247?

Dennis Canavan: Yes.

Mr Morrison: Will Dennis Canavan recap on what he said about his amendment to the Land Reform (Scotland) Bill? Am I right in saying that exactly the same thing happened in that situation, in that, having outlined his proposal at stage 2, he was then content to accept an Executive amendment at stage 3?

Dennis Canavan: No. On that occasion, my amendment was eventually accepted by the Executive. In fact, it was a rather strange situation. A few days after I lodged my amendment, Ross Finnie, who was a Cabinet minister, added his name to it, so that it became an amendment that was supported by the Executive. The amendment was agreed to at stage 2 and endorsed at stage 3.

The Convener: I see that two other members want to speak. I do not want us to get into another debate on the amendment, so I will allow them to ask only for brief points of clarification.

Nora Radcliffe (Gordon) (LD): In his response, the minister seemed to imply that, if amendment 247 were accepted, there would be a question about the legal competence of other sections of the bill. Will the minister clarify that?

The Convener: Will the minister respond?

Allan Wilson: Rather than respond to some of the rhetoric—

The Convener: No—just respond to that one question.

Allan Wilson: That is what I was about to do. As I said, schedule 5 to the Scotland Act 1998 specifically precludes compulsory purchase provisions in the bill from being applied to Balmoral because that would be outwith the legislative competence of Parliament. Committee members will be aware of that because they have sat through every minute and every hour of the bill's passage through Parliament. Mr Canavan is obviously not aware of the compulsory purchase provisions that we introduced to protect SSSIs. Consequently, he is probably unaware of that issue.

Karen Gillon: Will the minister clarify the exact nature of his proposal? Is he proposing to introduce an amendment that will do the same as what amendment 247 would do but without any CPO provisions?

Allan Wilson: That is what I said. That would tidy up the issue of legislative competence to which I referred.

Dennis Canavan: Will the minister clarify this matter of legislative competence? Will he quote us the chapter and verse from schedule 5 of the Scotland Act 1998 whereby compulsory purchase powers would be permitted in respect of any land in Scotland except land that is owned by the Queen in her private capacity?

The Convener: Minister, you have already mentioned schedule 5 to the Scotland Act 1998. Do you want to mention the exact paragraph? I am not sure that that is utterly necessary, although I think it might be coming.

Allan Wilson: If you wish, convener. Paragraph 3(3)(c) in part 1 of schedule 5, which is on general reservations on the constitution, precludes

"the compulsory acquisition of property held or used by a Minister of the Crown or government department."

The Convener: Thank you for that.

Dennis Canavan: The Queen is not—

The Convener: Sorry, Dennis. I will not take an exchange across the floor. Speak through the chair, please.

Dennis Canavan: Sorry, convener.

The Convener: Do you want to press amendment 247?

Dennis Canavan: Yes, because although I am not a lawyer, my reading of the Scotland Act 1998 is that it does not prohibit the compulsory purchase powers that the minister referred to earlier. The Queen is not a minister of the Crown.

10:30

The Convener: The question is, that amendment 247 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 247 disagreed to.

Dennis Canavan: On a point of order, convener. As I understand it, when a bill is introduced to the Parliament, the Presiding Officer is responsible for making a statement as to whether he thinks that the bill is within the provisions of the Scotland Act 1998 and therefore within the competence of the Parliament. If between now and stage 3 the Presiding Officer and the Parliament's legal advisers are of the opinion that my amendment is within the legislative competence of the Parliament, will I be permitted to relodge the amendment for stage 3?

The Convener: The issue of which amendments are to be admitted at stage 3 is a matter for the Presiding Officer to judge.

Section 53 agreed to.

Sections 54 and 55 agreed to.

Schedule 7

MINOR AND CONSEQUENTIAL AMENDMENTS AND REPEALS

The Convener: Group 3 is on repeals in relation to the Natural Heritage (Scotland) Act 1991. Amendment 249, in the name of the minister, is grouped with amendments 250, 183, 184, 251 and 252.

Allan Wilson: I am again grateful to Nora Radcliffe for lodging amendments 183 and 184. Their intention is to remove the unused natural heritage area designation from the statute book, which I am happy to support. The natural heritage area designation is a relic of a Government that was opposed to national parks in Scotland. As we know, that is not our position. As the designation has never been used and we have no intention of using it, I see no reason to retain it. As a result, I am happy to support Nora Radcliffe's initiative.

Amendments 249 to 252 will complete the job of abolishing NHAs, which were a provision of the Natural Heritage (Scotland) Act 1991, by making necessary consequential changes to a range of

other statutes. The amendments will also remove redundant provisions in the Environment Act 1995 and the Water Industry (Scotland) Act 2002 that will be overridden by the SSSI provisions in the bill.

I ask members to support all the amendments in the group.

I move amendment 249.

Nora Radcliffe: I have little to add to what the minister has said. He is not always so grateful to me, but it is nice that we have the same policy direction on this issue. I am taking the opportunity to do a wee bit of tidying up.

There is a lot of pressure to consolidate the law in this area, as it has been heavily amended and is extremely diverse. It is good that we can take this opportunity to remove at least one bit of obsolete legislation. I am grateful to the Executive for all the work that it has done in tidying up my original amendments.

Amendment 249 agreed to.

The Convener: The fourth group of amendments relates to the Forestry Act 1967 and felling licences. Amendment 234, in the name of the minister, is in a group on its own.

Allan Wilson: Amendment 234 makes a consequential change to sections 10(2) and 12 of the Forestry Act 1967 to provide the Forestry Commission Scotland with the necessary power to attach conditions to felling licences granted under that act to secure the interests of nature conservation.

Currently, the Forestry Act 1967 enables the Forestry Commission Scotland to attach conditions to felling licences in the limited circumstances specified in the act. Under section 10(2) of the act, conditions can be attached in the interests of good forestry or agriculture or the amenities of the district or for the purpose of complying with the duty of promoting the establishment and maintenance of adequate reserves of growing trees. Section 12 of the act restricts the conditions that can be attached to felling licences. The conditions must relate to the stocking or restocking of the land on which the felling is to take place or the maintenance of the trees on that land.

Amendment 234 allows the Forestry Commission Scotland to attach conditions rather more widely—for the purpose of conserving or enhancing the flora, fauna or geological or physiographical features, or the natural beauty or amenity, of any land—to operations related to felling that could otherwise have a deleterious effect on nature conservation. I hope that committee members will support our aim, by means of this amendment, of giving adequate protection for the purpose of nature conservation.

I move amendment 234.

Nora Radcliffe: I welcome this proposal, which will give the Forestry Commission a useful ability to act in the way that has been described.

Amendment 234 agreed to.

Amendment 250 moved—[Allan Wilson] and agreed to.

Amendments 183 and 184 moved—[Nora Radcliffe]—and agreed to.

Amendment 251 moved—[Allan Wilson]—and agreed to.

Amendment 186 moved—[Alasdair Morrison]—and agreed to.

The Convener: The fifth group of amendments relates to the Deer (Scotland) Act 1996 and prevention of damage to the natural heritage. Amendment 235, in the name of Bruce Crawford, is grouped with amendments 237 and 236.

Bruce Crawford (Mid Scotland and Fife) (SNP): It has long been known that ever-rising deer populations are damaging to the natural environment, prevent native woodlands from regenerating and result in heather moorland and other open ground habitats being over-grazed. Over-large deer populations also have an adverse impact on commercial woodlands, agriculture and crofting.

RSPB Scotland and WWF Scotland recently highlighted that issue and the need for further action and legislation in a report that was commissioned from an experienced and independent land management expert. The report highlights how, since 1974, the number of red deer alone has doubled from approximately 200,000 to a figure close to 450,000.

I know that it is notoriously difficult to count the number of deer, but the report contains the most authoritative and up-to-date information. I am not aware that its findings have been challenged by the Deer Commission for Scotland or, indeed, any serious commentator on the problem of deer numbers.

The need for legislative change is acknowledged by the Deer Commission for Scotland, which submitted proposals to the Executive in April 2003. Although the Executive rejected those proposals, the Deer Commission for Scotland continued to press its case. On 12 November 2003, it told this committee in relation to the Deer (Scotland) Act 1996:

"We also feel that section 8 is a rather difficult and convoluted piece of legislation that is not designed to be used easily."

It added:

"At the moment, it is tricky for us to meet the requirements for triggering the use of section 8 powers."—[*Official Report*, *Environment and Rural Development Committee*, 12 November 2003; c 413-414.]

The key ambition of the Deer Commission for Scotland and others involved in deer management is to amend section 8 of the Deer (Scotland) Act 1996 so that instead of having difficult requirements and convoluted procedures, the Deer Commission for Scotland's powers are more akin to SNH's new power in the bill to make land management orders.

Amendments 235, 236 and 237 seek to address the issues that I have raised. My original intention was to make it possible for the committee to consider a full redraft of section 8 of the Deer (Scotland) Act 1996 of the kind proposed by the Deer Commission for Scotland in its response to the Executive. However, it seems that that would have included elements that are outwith the scope of the Nature Conservation (Scotland) Bill, which is tightly drafted around the matters of conservation and natural heritage only.

Given that the specific proposals are all about deer, which are a significant part of our natural heritage, that was a considerable surprise and disappointment. I am sure that the minister did not intend that when he agreed the scope of the bill. Given earlier comments by the Deer Commission for Scotland, I wonder whether Scottish Executive Environment and Rural Affairs Department officials knew what they were about when they made the scope of the bill so tight. However, that was the ruling, so I have had to consider an alternative strategy, which is by way of the amendments before the committee today.

The first issue that my amendments seek to address is the use of the term "serious damage" in the Deer (Scotland) Act 1996. The second is the current convoluted public inquiry procedure. Members will recall that, on 12 November 2003, the director of the Deer Commission for Scotland told the committee:

"The other trigger is where we can establish with a great degree of certainty that serious damage has occurred, is occurring or is likely to continue to occur because of deer. The second trigger is a technical requirement, but we would have to be certain that we could prove that deer were the problem."

He went on to say:

"We have to be very clear about the situation because, if we ever use section 8 of the 1996 act, the chances are that we will be using it against someone who can easily afford to use some of the best Queen's counsel in the land to challenge us. There is a very high burden of proof on the Deer Commission in relation to the use of section 8."—[*Official Report*, *Environment and Rural Development Committee*, 12 November 1993; c 414.]

Therefore, the Deer Commission for Scotland's position is quite clear.

In his evidence, the director went on to explain how the burden of proof on SNH for showing a requirement for a land management order is lighter than the burdens currently required of the Deer Commission for Scotland. Interestingly, the Executive response to the Deer Commission for Scotland's proposals included the comment:

"it is accepted that section 8 of the Deer Act is relatively complex, rigid and time limited".

That concern leads me to suggest the deletion of the word "serious" from section 8 and section 11 of the Deer (Scotland) Act 1996—where it is used to describe damage to the natural heritage—which is what amendments 235 and 237 would do.

Currently, section 8(1)(b)(i) provides for control schemes where the Deer Commission is satisfied that

"deer have caused and are causing serious damage to woodland or to agricultural production, including crops and foodstuffs, or serious damage, whether directly or indirectly, to the natural heritage, or serious injury to livestock, however caused, or have become and remain a danger to public safety".

Because of the tightness of the scope of the bill, I cannot seek to remove the first mention of the word "serious", so I seek to remove the second mention. That would lower the burden of proof on the Deer Commission and encourage it to use its existing powers more. By allowing section 8 schemes or section 11 measures when there is damage rather than "serious" damage, the Deer Commission would be able to act on evidence that damage was being done rather than being concerned to satisfy the much more onerous requirement of serious damage.

10:45

Amendment 236 seeks to remove some of the convoluted requirements on the Deer Commission that I referred to earlier. Currently, a section 8 scheme may be objected to by anyone—any Mr and Mrs Smith from Kirkwall to Kent can object. If the objections are not withdrawn, there must be a public inquiry, leaving the Deer Commission with the continual prospect of costly and lengthy public inquiries, perhaps with several objectors.

Of course, it is only proper that if one's rights or property are affected, a right of appeal exists. I had hoped to introduce a Land Court approach, as exists for LMOs. Instead, the amendment goes part of the way by limiting the right of public inquiry to objectors who are materially affected—the amendment refers to the "owner or occupier". That maintains natural justice, while reducing the bureaucratic hurdles that the Deer Commission faces.

With the amendments, I have taken a balanced approach to trying to make it easier for the Deer

Commission to exercise its powers while ensuring that people who are affected who have a real and meaningful interest retain their proper right of appeal. It is interesting to note that the amendments have the support of Scottish Environment LINK.

I move amendment 235.

Rob Gibson: I will be interested to hear how the minister and SEERAD view this group of amendments, because the evidence that we have received throughout our consideration of the bill is that serious damage is being done by deer in Scotland, as Bruce Crawford eloquently stated.

The fact that there have been problems between SNH and the Deer Commission in dealing with the issue is on the record. We may argue about the ability of the bill to manage the issue totally, but when a bill on nature conservation is before us that gives us an opportunity to state a means whereby the Deer Commission could deal with the problem more easily, we should take it. It might be fine to take an ivory-tower approach and to say that we will deal with the issue separately but, as time goes by, damage continues. It would be dreadful if the Government of Scotland were to add to the damage done by deer by not accepting the amendments.

Allan Wilson: The aim of the amendments is admirable, but I will ask the committee to resist them. I should point out that it was not the Executive that rejected Bruce Crawford's original amendments; the committee rejected them for consideration in this legislative provision.

The amendments aim to simplify the Deer Commission's powers of compulsion, but we do not think that that is necessary. I accept that the commission has not so far used its ultimate powers of compulsion under section 8 of the Deer (Scotland) Act 1996, to which Bruce Crawford referred, but that is not because of their complexity or otherwise, as was argued. It is interesting that Bruce Crawford quoted what the director of the Deer Commission said when he spoke to the committee in November, because I would like to quote from the same exchange. He stated:

> "We have come close to using section 8 powers on several occasions, but have not yet done so, mostly because we managed to resolve the issue before we went down that road."—[*Official Report, Environment and Rural Development Committee*, 12 November 2003; c 413.]

That is an important point because the Deer Commission works mainly by consensus; it has gained respect in many fields for that approach.

The main problem that the DCS has encountered when it has considered compulsory action in the past is that evidence of damage—whether or not it is serious, which is an important point—has rarely been sufficiently robust to convince on appeal that the damage occurred and that, serious or otherwise, it was caused by deer. To counter that, the Deer Commission has more recently been working with SNH and others to improve evidence gathering to make it more robust and transparent. I would argue that that is key to enabling compulsory action to be taken where appropriate. Any difficulties that have been identified in the past have arisen more as a result of the lack of convincing evidence than from difficulties with the process.

Indeed, as members are probably aware, improved evidence collation recently allowed the Deer Commission to use existing emergency powers under sections 10 and 11 of the Deer (Scotland) Act 1996 to act quickly to remove deer that were endangering an internationally important woodland at Glen Feshie. Both sections require the commission to be satisfied that deer are causing serious damage before it can act.

Natural heritage interests were protected using existing compulsory powers and without the need for the 1996 act to be amended. The action that was taken supports an on-going voluntary agreement with the local estate under section 7 of that act. I am assured that all the necessary warnings were given and that high priority was given to deer welfare during the process.

As Bruce Crawford said, amendments 235 and 237 aim to remove the requirement for the DCS to prove serious damage. As I said earlier in relation to Glen Feshie, the Deer Commission has shown that it can use its regulatory powers even with the requirement for evidence of "serious damage" being in place. Proving damage requires a robust scientific case to be made before compulsory action can be taken. That is a fair and reasonable approach; after all, we are talking about the exercise of compulsory powers. It is important to recognise that exercise of those powers by the Deer Commission is a serious matter and that their use in targeting serious damage is paramount when other methods have failed.

Amendment 236 aims to limit the right to object to only the landowner or occupier on whom a control scheme will take effect. Although that is fair enough, as they are the principal persons who would be likely to make an appeal, it is unclear what advantage amendment 236 would bring. Ministers already have powers to disregard what can be described as frivolous objections.

Importantly, all three amendments leave in place the requirement for evidence of "serious" damage to agriculture and woodlands, yet that is the requirement that was deemed to be the problem. It would still be necessary for the Deer Commission to be satisfied that deer were causing "serious damage" to woodland or agricultural production before a control scheme could be made on either

of those grounds. Therefore, if the amendments were enacted, inconsistencies would be left in the 1996 act for no reason. Arguably, the amendments would also make the act more complex, although I know that that is not Bruce Crawford's intention.

Considering the issue in the round, I dare to say that to amend the Deer (Scotland) Act 1996 in this way smacks of a piecemeal approach and a rushed job, and risks future dissatisfaction on the part of the very interests that the amendments are intended to placate. The DCS is taking the appropriate action to address deer damage where there is clear and transparent evidence that it is affecting important sites, as in the example that I gave of Glen Feshie. The amendments would make no material improvement to that on-going work. I suggest that the committee allows the DCS to get on with the job in partnership with SNH and other land managers.

I ask Bruce Crawford to withdraw amendment 235 and not to move amendments 236 and 237. I say to him that, if the DCS were to return at a later stage with clearer evidence that the legislation cannot be made to work, we would look at it again. We promised in the department's response to the Deer Commission for Scotland that we would re-examine the legislation.

I am grateful to Bruce Crawford for lodging an amendment, but I regret that I must ask him to withdraw it.

Bruce Crawford: I recognise that the clerks advised us that this issue was outwith the scope of the bill—I am not seeking to suggest otherwise. I was trying to reinforce the point that the bill has been drafted so tightly that it is almost impossible to amend it significantly and to lodge amendments that would have produced a better solution. I accept what the minister has said on the matter.

The minister said that the Deer Commission for Scotland has come close to using these powers on a number of occasions, which is correct. However, it has hesitated about doing so because serious damage requires to be proved. Although convincing a court that there has been damage, rather than serious damage, is still difficult to do, such a provision would have made it much easier for the commission to proceed. It is all but impossible to produce evidence of serious damage; it is much easier to produce evidence of damage.

In the case of Glen Feshie, emergency powers were instituted and used, rather than powers that were considered in a proper inquiry process as required by section 8 of the Deer (Scotland) Act 1996. I congratulate the Deer Commission for Scotland on using the powers in the way in which it did.

The minister has almost conceded that, under amendment 235, only owners or occupiers would be able properly to appeal. He said that he would be able to knock out any objector who was seen to be spurious, although he did not use that word. However, that would still allow someone from outwith an area, who was not an owner or occupier and had no real interest in a case, but who could make a material argument for being an objector, to object—whether they came from Kirkwall or from Kent. I am not convinced that my argument was properly rebutted.

The minister suggested that the amendments are a rushed job. I do not think so and take exception to that phrase. We took a long time over trying to find a way around the tightness of the bill.

I am glad that the minister has said that he will re-examine the issue. Before I decide whether to withdraw the amendment, I would like to press the minister on one issue. The Deer Commission for Scotland's submission to ministers contained considerable evidence indicating why it would like the legislation to be changed. What evidence would the commission have to produce to persuade the minister that the legislation needs amended?

My final point relates to the issue of serious damage. When I spoke to my amendment, I conceded that it would not have an impact on agricultural production, including production of crops or foodstuffs, and that its impact would be limited to issues relating to natural heritage. We face that problem precisely because of the tight way in which the bill has been drafted. I accept that our agreeing to the amendment would not produce the tidiest piece of legislation, but it would produce a better position than exists at the moment.

Allan Wilson: Bruce Crawford has made a couple of points relating to our dialogue with the DCS. The DCS saw its recommendations as an early stage in what it perceives to be an on-going process. It has not expressed concerns about the distinction between serious damage and ordinary damage that Bruce Crawford highlighted. Had it done so, I might have taken a different approach to the amendment. Like the convener, I remain of the opinion that the bill is not the appropriate legislative vehicle for the change that the member seeks.

The Convener: That is not the point on which I would like you to comment. You may deal with the issue of evidence, if you wish.

Allan Wilson: New-style and robust evidence is in the process of being gathered and will overcome the difficulty that has been identified. As we promised in the department's response, were the DCS to provide clearer evidence that existing

legislation cannot be made to work, we would examine that legislation specifically.

The Convener: Okay. In the light of that, does Bruce Crawford want to press or withdraw his amendment?

Bruce Crawford: The Deer Commission for Scotland's written evidence says that it wants a less convoluted and more transparent method of enforcement than that provided in section 8 of the Deer (Scotland) Act 1996. I have heard nothing to dissuade me from pressing my amendment.

11:00

The Convener: The question is, that amendment 235 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Scott, Eleanor (Highlands and Islands) (Green)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Amendment 235 disagreed to.

Bruce Crawford: I recognise the result of that vote as well as anyone else, but I hope that the minister has listened to today's debate and will give the Deer Commission for Scotland a real opportunity to change things at an appropriate time in future.

Amendments 237 and 236 not moved.

Amendment 252 moved—[Allan Wilson]—and agreed to.

Schedule 7, as amended, agreed to.

Section 56—Interpretation

The Convener: Group 6 is on biodiversity interpretation. Amendment 87, in the name of Roseanna Cunningham, is in a group on its own.

Roseanna Cunningham: Amendment 87, which arises directly from the recommendation in paragraph 31 of our stage 1 report on the Nature Conservation (Scotland) Bill, reflects the committee's concern about the lack of a definition of biodiversity in the bill. Biodiversity, of course, is at the heart of the bill.

The minister will respond by saying simply that there is already phraseology in the bill that says that we will "have regard to" the United Nations Convention on Biological Diversity. However, with my lawyer's eyes and intellect, I am bound to say that using the words "have regard to" is not the same as enshrining a definition. Those words allow a get-out. Why is such a get-out—because that is what it is—deemed necessary in Scotland when, paradoxically, it was not deemed necessary in England and Wales in the Countryside and Rights of Way Act 2000? The English and Welsh legislators do not seem to think that they need a get-out clause, but we in Scotland apparently need one.

The minister may have a good reason for believing that we need a get-out clause. If there is a good reason, I would like to hear it. If we do not put the definition of biodiversity clearly in the bill, we will allow a loophole. The minister knows that. It is inexplicable that we should proceed on the present basis when biodiversity is meant to be the core of the bill.

I move amendment 87.

The Convener: I am relieved that Roseanna Cunningham stopped at that point; I agree with her totally on the principle of including a definition, but if she had gone on much longer, I might have had to disagree with her in a vote. Roseanna raises an important point that the committee raised at stage 1 and I am not sure that the minister's response was all that convincing. Although I do not necessarily sign up to the emotions that were expressed in Roseanna's remarks, I agree that it would be useful to have a definition in the bill. The place where Roseanna has suggested that we amend the bill is a good one. We discussed that briefly at the start of stage 2.

It is important to draw people's attention to what biodiversity means. Many people find the concept quite straightforward once it has been explained to them, but getting our heads round it is quite an issue. For organisations, it is important that there is a clear definition of biodiversity in the bill, with the caveat that, should the definition from the United Nations Convention on Biological Diversity change over time, our act should be changed. We should support amendment 87.

Nora Radcliffe: All I want to say is, "Ditto." The committee was of the view that we should have a definition to tie down what we mean by biodiversity. I am glad to see amendment 87. As the convener said, it is time-proofed—if the convention changes, the act will change. I am happy to support amendment 87.

Allan Wilson: I share your view, convener, that Roseanna Cunningham's contribution was in danger of becoming an example of how not to win friends and influence people. However, I share her desire to ensure that there is something that she

called a no-get-out clause, but which I call no ambiguity about any of the aims in the bill. I remain of the opinion that a definition is not strictly necessary from a legal perspective, but if committee members or others feel strongly that the term "biodiversity" should be defined in the bill, I am happy to accept amendment 87.

The Convener: Roseanna Cunningham has elicited total support today.

Amendment 87 agreed to.

The Convener: Group 7 is on the interpretation of interest in land. Amendment 226 is in a group on its own.

Allan Wilson: Amendment 226 is a technical amendment that will provide clarification by defining "interest in land", which appears in a number of places in the bill. The intention has always been that it should be understood to mean a legal interest in land. Amendment 226 puts that beyond any doubt.

I move amendment 226.

Amendment 226 agreed to.

Amendments 88 to 92 moved—[Allan Wilson]—and agreed to.

The Convener: Group 8 is on the interpretation of damage to protected natural features. Amendment 227 is in a group on its own.

Allan Wilson: Amendment 227 fulfils a commitment that I gave to the committee on day 2 of stage 2, when we debated Nora Radcliffe's amendments dealing with disturbance in SSSIs. Nora Radcliffe suggested that the bill needed to do more to deal with situations in which birds and animals in an SSSI are subjected to significant disturbance. I hope that she agrees that amendment 227 picks up that proposal. The objective is to ensure that significant disturbance to fauna can be clearly understood as damage—dare I say it—to the SSSI, even when no physical destruction has taken place. If birds and animals are being driven away from an SSSI, the site will no longer be of special scientific interest. It is clear that that is damage, and it will be covered by the existing provisions in part 2, including the offence provisions and the penalties that are set out in section 19.

I move amendment 227.

Nora Radcliffe: I welcome amendment 227, which will enhance the bill. I am happy to support it.

Amendment 227 agreed to.

Section 56, as amended, agreed to.

Section 57—Short title and commencement

The Convener: Group 9 is on commencement. Amendment 248, in the name of Nora Radcliffe, is in a group on its own.

Nora Radcliffe: Amendment 248 intends to ensure that the amendments that we have made in relation to wildlife crime become effective immediately upon royal assent. That provision would cut out the delay that would otherwise occur while we waited for ministers to say that they wanted the measures to come into effect. We want the extended sanctions to be effective as soon as possible. Royal assent will probably come in the late spring, which would mean that the measures would be in effect in time for this year's breeding and flowering season.

I move amendment 248.

Allan Wilson: I recognise the point that Nora Radcliffe is making and I share her enthusiasm for having the measures in the bill come into force as soon as possible. The step that Nora Radcliffe proposes has been taken before when there was a pressing case for immediate implementation. Indeed, the high-priority wildlife crime measures in last year's Criminal Justice (Scotland) Act 2003 came into force on royal assent. However, that was very much the exception to the rule and I had to secure Cabinet approval in that regard. As members know, the norm is to allow a two-month period after royal assent before bringing provisions into force. That delay allows everyone who is affected by the new legislation to find out about it and to make appropriate arrangements.

As Nora Radcliffe will understand, it is not only wildlife criminals who are affected by the provisions; the police, the courts, Scottish Natural Heritage and others all have to prepare for the effect of the new legislation, not least in relation to the provision of training for the sheriffs and others. We should allow them adequate time to do so and I believe that the two-month period is appropriate.

On that basis, and with those assurances, I ask Nora Radcliffe to withdraw amendment 248.

Nora Radcliffe: If royal assent is given in late spring, the following two months are significant. If the two-month period covered November to January, the question of getting the measures into law as quickly as possible would not be as important.

If amendment 248 is not agreed to, the provisions will come into effect when ministers say that they will. Is there any scope for that two-month period being reduced? Does the minister intend to consider a reduction in that period?

Allan Wilson: That would be a Cabinet decision and I could not commit the Cabinet in advance. The normal period is two months and I do not think

that it is unreasonable to expect that those who will be affected by the bill should be given two months to take account of its provisions. There is a balance to be struck, but I cannot commit the Cabinet to doing anything.

Nora Radcliffe: I will withdraw my amendment and have a think about the matter before deciding whether to bring the issue back at stage 3.

Amendment 248, by agreement, withdrawn.

Section 57 agreed to.

Long Title

Amendment 93 moved—[Allan Wilson]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends our stage 2 consideration. Our amendments will be incorporated and the bill will be reprinted before being further discussed in the chamber at stage 3.

11:14

Meeting suspended.

11:22

On resuming—

Subordinate Legislation

Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004 (SSI 2004/44)

The Convener: I welcome everybody back to the committee. Under agenda item 2, we have a couple of statutory instruments. The first is an order that is subject to the negative procedure. I welcome again the Deputy Minister for Environment and Rural Development, Allan Wilson, and his officials. Several members are visiting the committee for this agenda item.

I bring to members' attention the Subordinate Legislation Committee's comments on the order, which have been circulated. Members will note that that committee picked up several minor drafting errors, which the Executive has undertaken to correct in March, when it is expected that amending regulations will be required.

The committee received copies of the regulatory impact assessment that accompanies the order only this week. I understand that the RIA had been completed when the order was laid, but copies of it did not accompany the order and were not sent to members of the Subordinate Legislation Committee or of our committee. That is a clear breach of the Executive's guidance. I have had to raise such an issue with the minister before. It is unacceptable that we did not receive the RIA at the right time. I record my deep disappointment that that has happened again.

We will now consider the motion lodged by Richard Lochhead, which invites the committee to recommend to the Parliament that nothing further should be done under the order.

I suggest that at the outset we have a question-and-answer session to clarify technical matters and to enable explanations of detail, while the officials are at the table with the minister. The minister will be able to participate in the debate on the motion that Richard Lochhead has lodged, but the officials will not. When points of clarification have been dealt with, we will move to a formal debate. I will invite the minister to make some opening remarks and take points of clarification and explanation before we move formally to the debate, when I will invite Richard Lochhead to move his motion. As members are clear about how the session will be structured, I invite the Deputy Minister for Environment and Rural Development to make some opening remarks.

Allan Wilson: I take the point that was made earlier about the late availability of the RIA. I raised the issue with officials, who explained that it resulted from the fact that they are working incredibly hard to deal with all the impositions that have been placed on them since the December fisheries council. I apologise to the committee for the late availability of the RIA—no slight was intended to the convener or to members.

It will be helpful—not least to counter some of the media hyperbole that was flying about this morning—if I make a few introductory points about the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004 (SSI 2004/44). I understand the inclination of some to suggest that the order should be annulled—not least because last year the Minister for Environment and Rural Development, Ross Finnie, said that the previous European measure, the now infamous annex XVII, was deeply flawed. This year's European Union measure, annex V, is an improvement, but I accept that it is neither perfect nor popular.

However, I argue that popularity is not the measure of what is right. Effort control is very unpopular, but it is essential to the long-term viability and prosperity of the white-fish sector and associated fishing communities—the paramount issue, in my view. That is why in December we negotiated a package of measures that combined more effective and equitable controls with more generous total allowable catches and quotas on key Scottish stocks such as haddock and prawns. In my view, turning our back on effort control is not a viable policy option. It is not a question of my trying to convince the partnership members of this committee to force through a measure—I know that members share my view.

The December deal was a package. I understand the linkages that are now being made between the days-at-sea provisions and the permit arrangements that were introduced for directed haddock fishing. I am pleased to tell the committee today—because I have been approached by members—that I have agreed to add Whitehills, Wick, Macduff and Arbroath to the list of ports designated for haddock landings.

Annex V is more equitable and effective than annex XVII was. Its scope has been extended to include geographical areas that were previously exempt, such as western waters and the eastern channel. It begins to bite more effectively in fisheries in the southern North sea and in industrial fisheries. It is simpler to enforce effectively, especially in the North sea. I respectfully suggest that a decision to annul our associated Scottish order would be a big mistake—for a number of reasons.

First, annex V has direct effect. Even if we were not to introduce domestic legislation setting out detailed implementation and enforcement provisions, fishermen would be affected by the measures—notably, the days-at-sea limits set out in table 1 of annex V. Failure to agree domestic—that is to say, Scottish—legislation will not mean that the EU measures will not apply to our fishermen. They have direct effect through section 30(1) of the Sea Fisheries Act 1981.

Secondly, the Scotland Act 1998 makes specific provision that requires the Scottish Executive to act compatibly with Community law. As a matter of law, the Executive cannot act in a manner that is incompatible with Community law. We cannot ignore or fail to enforce annex V.

Thirdly, and perhaps more persuasively, the order specifies a number of flexibilities that depend for their effect on the order rather than on annex V. In particular, the order provides for a choice of management periods of up to 11 months. That offers fishermen more flexibility to manage their fishing operations over that period. The order also provides for the transfer of days between vessels and it provides for derogations that release more than 320 Scottish vessels from restrictions in their days at sea when using certain fishing gear. Those important flexibilities, which are available to Scottish fishermen so that they can better manage their effort control measures, would be lost if the order were annulled.

I meet fishermen and their representative organisations regularly so I understand why they dislike effort controls. I also accept that European bureaucracy does not produce the simplest and best regulations. However, we need to make effort controls work if we are to be serious about sustainable development in our fisheries. Consequently, we require the domestic order that is before us if we are to put the most flexible interpretation on annex V. The order helps our fishermen to manage some of the more restrictive provisions in annex V.

I hope that my explanation of our overall position on why the order should not be annulled is helpful. I am happy to answer any questions that might arise.

11:30

The Convener: I thank the minister for those opening remarks. I suspect that I am not alone in having received many representations about the detail, which I certainly want to test out, but I will let Maureen Macmillan speak first.

Maureen Macmillan: As the convener said, we have received many representations both from individual fishermen and from the Scottish Fishermen's Federation. The two letters that we received from the SFF each raised points that need to be clarified. The first letter, which was sent

to us at the beginning of February, asserted that the smaller their mesh size, the more days at sea vessels are allowed. That assertion was not qualified in any way, so I presume that it refers to prawn fishing, for which the bycatch is less than 5 per cent. Will the minister confirm whether that is an anomaly, or is it perhaps a misleading statistic that the SFF has provided?

In the second letter, the SFF tells us that the restrictions would exclude dredgers, creelers and the pelagic sector from the cod protection areas. That has caused quite a lot of alarm among those fishermen. Is there any basis for that alarm? The SFF says that the information that it has provided is the opinion of several experts that it has consulted, although it does not name those experts. Will the minister provide some reassurance on those two points?

The Convener: I have clarified with Richard Lochhead when I intend to allow him to move the motion to annul, which the Parliament's standing orders provide up to 90 minutes to debate. At the moment, we are dealing only with points of clarification for the minister or his officials. Richard Lochhead was concerned that he would not be able to speak in this part of the meeting, but any member is allowed to ask a point of clarification. Once we have started our formal 90-minute debate, the officials will not be able to participate.

I now see a forest of hands. I will let Rob Gibson speak first and I will note down who else wants to speak.

Rob Gibson: Can the minister and his team explain why the new restrictions—the cod protection zone and the haddock permit, which is required for catching the additional haddock quota that was awarded—apply only to Scottish vessels and not to foreign vessels that fish the same waters for the same stocks? Why was that agreed and what effect will it have on those stocks?

The Convener: Will the minister respond to those two sets of points of clarification? We will then keep working round so that we do not lose track of people's comments.

Allan Wilson: The restrictions to which Rob Gibson referred have nothing to do with days at sea but are concerned with haddock management, about which I will say a little more later. The fact is that the UK fleet catches by far and away the majority of the haddock that is caught in the area of sea in question.

I am happy to confirm for Maureen Macmillan that we have moved to amend the order to make it absolutely clear and to remove any dubiety about whether it applies to unregulated gear. It was always our interpretation that the order as laid applied only to regulated gear. However, I understand the need for clarity in what is a complex area of management so, lest there be any doubt, we will amend the order so that there is no question that scallop fishermen, creelers and such like will be covered by its provisions. I understand that the other issues that have been raised by the Scottish Fishermen's Federation have likewise been answered satisfactorily.

Roseanna Cunningham: I have three specific questions. Will the minister explain how the 15 days was calculated in the first place? What assessment was made of the economic viability for the industry of being able to fish for 15 days a month? I also want to raise a point about the days that will not count towards the 15 days—that is, days that could be lost because of the weather or rescue operations. I understand that this year, such days will be counted against the 15 days, whereas they would not have been previously. Why has that change been made? Does it not significantly affect the 15-day rule as it stands?

Allan Wilson: Those are good questions and we have discussed them with the SFF directly. My officials have written to the SFF—at the organisation's request—with a detailed explanation of the calculations and how the Commission came to the view that our fleet should get the five extra days. In 2003, the basic allocation for white-fish gear, which included the anticipated effect of the 2003-04 scheme, was nine days plus six days, of which only four days took account of decommissioning; the remaining two days were then awarded to all member states to aid adjustments to be made for the transition into the new effort control regime.

The calculation is essentially that decommissioned vessels accounted for one third of our fishing effort on cod by vessels using 100mm-plus gear—that is roughly half the fishing effort of the remaining fleet. Our white-fish fishermen have therefore been awarded 15 days rather than 10 days. That includes an additional 15 days and the order gives them the flexibility to fish those additional 15 days per month over an 11-month period rather than confining them to 15 days per month. They are using that flexibility to their advantage.

On the force majeure provisions, as I have said at previous committee meetings and elsewhere in public, the Executive has always said that it will consider requests—as it did last year—to discount days on the basis of special circumstances, such as a vessel going to the aid of a stricken vessel. We will not put our Scottish fishing fleet in danger. Officials dealt with more than 200 such requests in 2003. Under the current regime, we are already dealing with several similar cases that have added to vessels' days at sea; the number is already into double figures. I understand that the explicit provisions for discounting days for reasons of force majeure are to be reinstated in annex V.

The Convener: So someone who goes to save someone else would get in touch retrospectively to make sure that their time was accounted for. That will now be provided for through this order.

Allan Wilson: Yes—it was always going to be; that has always been the case.

The Convener: Many in the fishing community have raised that concern.

Allan Wilson: The fleet raised it with me and we told them that we would continue the practice. As I said, there were 200 such instances last year, and we are already into double figures for this year. Ewen Milligan might be able to add something to that.

Ewen Milligan (Scottish Executive Environment and Rural Affairs Department): As the minister said, we have dealt previously—in 2000 and in 2003—with more than 200 instances in which, for example, fishermen have gone to assist a stricken vessel that has broken down and have been involved in towing that vessel back. In 2003, instances of adverse weather meant that fishermen were involved in bringing injured crewmen back to port. There were also cases of fishermen simply wanting to move their vessel from port to port without those days being counted. We have made it clear in the guidance that has been issued to the industry that, notwithstanding the lack of any formal force majeure provisions in annex V, we will continue that policy.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): If I understand your argument, minister, it would be a mistake to support Richard Lochhead's attempt to block the order, on the basis that what we have at the moment is a more flexible interpretation of annex V. It strikes me that that is a bit like being between the devil and the deep blue sea. What you appear to be saying is, "Trust us. We will somehow manage to work our way, to some extent, round the regulation to make things slightly more flexible for Scottish fishermen, but if you go ahead and block the order you will be faced with the full wrath of the original European legislation." Is that what you are saying to us?

Allan Wilson: I am saying that, plus a wee bit more. It would be worse to annul the order, because that would take us back to a less favourable and more inequitable regime.

The Convener: Just a second. I think that we are verging on entering the debate on the order. Ted Brocklebank's point would be a valid point to raise in the argument that we will have shortly.

Mr Brocklebank: I see. I thought that I was raising a technical point that the minister could explain to us in further detail, because I was not convinced by what he said first time round. I spoke to his officials yesterday, but I still find it slightly difficult to get my head round how his more flexible approach, which he believes will work, will come into force. I do not know how that will work.

The Convener: Minister, could you try to stick to making a technical-sounding answer? Please make it brief. I do not want us to get into an argument about why people should or should not support the motion to annul at this point. At this stage, our discussion should really be about the technical points and what would happen, technically, if we were to annul the order.

Allan Wilson: Let me give an example. The order allows for more flexible management, as I have already said, for the 15 days at sea per month to be managed over an 11-month period rather than in any given one-month period.

The Convener: Right. That is a matter of judgment for members to come back to. Next on my list is Stewart Stevenson, who has some questions.

Stewart Stevenson (Banff and Buchan) (SNP): They are indeed questions and they involve arithmetic, minister, so be ready to write.

With your indulgence, convener, I welcome the good news for Whitehills and Macduff in my constituency—which I am sure Wick and Arbroath will be equally pleased to hear—for which I thank the minister and Ewen Milligan.

I turn now to my questions. First, my calculations suggest that we have lost 11,340 vessel days through the decommissioning of 67 vessels, each of which had 15 days per month over 12 months last year. Does the minister agree that that is the reduction in vessel fishing days, or does he wish to express it as a percentage reduction in vessel capacity unit days or in some other way? What is his view of the reduction in the ability to fish that would be brought about by the EU decisions and by the order?

Secondly, the minister referred to the five extra days that are being provided this year, over and above the 10 days—that has arisen because of the recent decommissioning of 67 vessels. He made reference to the previous year's 15 days being nine plus four plus two. Does he accept that we cannot understand why the decommissioning in the previous year is not carried forward into the present year as additional days since, as far as I understand, the vessels that were decommissioned more than a year ago remain decommissioned? Perhaps he could explain the arithmetic and the logic of that.

Finally, the minister said in his opening remarks that the Executive must conform to Community law. He will be aware that the fishermen argue that the council's decisions are discriminatory—I

understand that they are in the process of taking legal action to test that assertion. If Community law is incompetently drafted and illegally enforced, is it legally necessary for the Scottish Executive to conform to it?

11:45

Allan Wilson: I said that we had written to the SFF, at its request, to explain how the complex calculations that came from the Commission in December were done. I am quite happy to write directly to Stewart Stevenson as well with those details.

I think that Stewart Stevenson's question was about the total reduction and decommissioned vessels. Expressed in million kilowatt days, the reduction amounts to 31.7 per cent, through decommissioning and other capacity removal; that leaves the effort by the remaining fleet at 22,858 million kilowatt days, which is a reduction from 33,456 million kilowatt days in trips catching cod in 2001. I am happy to give Stewart Stevenson all the detail on the issue that I have given to the SFF.

As Stewart Stevenson knows—it is a matter on which I suspect that we agree—we favour a kilowatt hours/days method of addressing effort limitation. We are pursuing the matter with the Commission and we have secured an agreement to review the situation mid-year in relation to a prospective move to a kilowatt-day approach, which we believe to be better than the days-at-sea approach, even with the added flexibilities that we are introducing through the order.

On the legality of the decisions, as I said in my opening statement, the so-called discrimination to which Stewart Stevenson refers relates not to days at sea but to haddock management. I understood from my discussions with the SFF that it was not pursuing its legal challenge to that aspect of the December council deal because it agreed with me that our on-going discussions with the Commission—on a review of the cod recovery zone and its dimensions, the introduction of a prospective haddock box and its dimensions, and on the proportion of haddock to be caught within that zone—was a better approach. I think that Stewart Stevenson knows that my officials have been working in concert with the industry in making representations to the Commission in pursuance of that objective. There is, as I say, no question of members being asked to support measures that are discriminatory or contrary to European law—quite the opposite, in so far as annex V would have direct effect even if the order were annulled.

Stewart Stevenson: I have a brief point of clarification that relates directly to what the minister has said. Does the calculation of a 31.7 per cent reduction in kilowatt days include decommissioning over two years or only the most recent year's decommissioning? Is that where the five additional days come from?

Allan Wilson: As I think I just said—perhaps not in response to Stewart Stevenson's question but in response to Roseanna Cunningham's—the calculation relates to both years

The Convener: As there are no further points of clarification, we now move on to the formal debate. I invite Richard Lochhead to speak to and move motion S2M-937.

Richard Lochhead (North East Scotland) (SNP): I welcome the minister's statement on the ports issue, which my SNP colleagues and I have raised on numerous occasions in recent weeks. That is one step forward, which we all welcome.

I am sure that committee members will have welcomed today's headlines that the Arbroath smokie has been offered official protection by the European Union. Of course, the Arbroath smokie depends upon haddock and the motion gives the committee the opportunity to protect the future of the white-fish sector in Scotland and the future of white-fish stocks on which products such as the Arbroath smokie depend.

There are two reasons why I seek the committee's support for my motion. First, the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004 (SSI 2004/44) implements the dreadful, discriminatory, anti-conservation and unworkable deal that was signed in December by the Scottish and UK ministers in Brussels.

Secondly, the order is flawed and has a number of errors, primarily as a result of the failure of the Executive to formally consult the fishing industry on the order. The Executive confirmed that in the note that accompanies the order.

My aim is simply to urge the committee to reject the order and to ask ministers to replace it with one on which they have consulted the industry, that guarantees safety at sea and that reflects the changes in the deal that are essential to protect the future of the fishing industry in Scotland. Even ministers now accept that fishing communities cannot be expected to live with the deal as it currently stands.

The crux of the issue is that the December deal gave the Scottish fleet a bigger quota, but not the time or space at sea to catch it. The fleet has only 15 days per month at sea. That is exactly the same as was agreed in the previous year's deal. That is not enough to ensure the financial viability of the white-fish fleet.

The 15 days per month is the same as last year, despite the fact that there are fewer vessels in the

seas and that stocks are healthier. There has been no reward whatsoever for the very painful decommissioning schemes that the white-fish fleet went through in recent years. The first scheme in 2001 led to the loss of 98 vessels from the white-fish fleet in Scotland. The 2003 scheme, which has recently come to a close, is set to remove 67 vessels from the white-fish fleet in Scotland. No other fleet in Europe has gone through that painful process.

As Stewart Stevenson said when speaking to the previous agenda item, that means that the Scottish fleet has 11,000 fewer days at sea in 2004 than it had in 2003, despite the fact that stocks are healthier. We are therefore in the ludicrous position that Europe allowed the Scottish fleet 11,000 more days at sea when stocks were much less healthy.

No one has adequately explained to the white-fish sector or the fishing industry how the days were calculated. I listened carefully to what the minister said a few moments ago, but we still cannot tell the difference between a political negotiation and a scientific calculation. There has been no adequate explanation as to how the days at sea were worked out for the Scottish fleet in relation to the impact on stocks. The Scottish fleet uses the biggest mesh in the North sea—120mm. The most conservation-minded fleet in the North sea took the biggest hit in the negotiations.

Another important factor that I ask the committee to bear in mind is that the fleet has lost the two pillars that allowed it to survive in 2003. The first pillar was the fact that, in its 15 days a month at sea, the fleet could go to those areas of the sea that were not covered by the restrictions. The second pillar was the aid package that was delivered by the Executive in 2003, which provided several million pounds-worth of aid to the fleet. That is no longer in place. The only change has been a huge step backwards for the white-fish fleet.

The new restrictions apply only to the Scottish fleet in the North sea, not to the other vessels that fish for the same stocks in exactly the same waters. Only the Scottish fleet has been subjected to the new restrictions, including the huge cod protection area that has been established, which includes the traditional haddock grounds. Similarly, the new haddock permit system applies only to Scottish vessels that want to fish for haddock outwith the cod protection zone. The new restrictions make it virtually impossible for the Scottish fleet to catch the haddock quota that it has been allocated in its traditional fishing grounds.

I ask all members to keep in mind, when they decide how to vote on my motion, the fact that the deal that was signed in December and that will remain in force if the committee passes the order today, is appalling in terms of fisheries conservation. First, the fact that the fleet has been given only 15 days a month at sea means that vessels will be tempted to target the most valuable species, which is cod. They will have no other choice if they want to survive economically. That means that, although the scheme was designed to protect cod, it will make matters worse for that species. Secondly, the haddock permit scheme is so complex and draconian that it will lead to fish being killed and thrown overboard despite the fact that the vessels that are doing that are within their quota and should be able to land the fish.

The crux of the issue is that the cod protection area takes in a huge swathe of the central and northern North sea. Only 20 per cent of the Scottish fleet's haddock quota can be caught in that zone, which means that 80 per cent of the haddock quota has to be caught outwith that zone. Leaving aside the fact that the main haddock grounds are within the zone, Scottish vessels that want to fish for 80 per cent of the quota have to apply for a haddock permit. In turn, that means that they are allowed only a 5 per cent cod bycatch outwith the cod protection zone.

If vessels that want to fish for haddock outwith the cod protection zone do not take a haddock permit, all the haddock that they catch count toward the 20 per cent of the quota that can be caught in the cod protection zone. No matter where the haddock are caught, they count towards the percentage from the cod protection zone, which will be closed to the haddock fishery as soon as the 20 per cent figure is reached.

Putting that aside, I give two illustrations of why the permit system will destroy not only jobs in Scotland, but the fish stocks that we all hope to protect.

The prawn fishermen in Fife are caught in a trap. They cannot apply for a permit to catch haddock outwith the cod protection area because they use mesh that is smaller than 100mm. That means that all of their haddock bycatch automatically counts towards the 20 per cent quota for the cod protection area, no matter where it is caught. A huge fishery is now closed to the prawn fishermen in Fife because they have exceeded the 20 per cent that they are supposed to catch in that area. That means that, when they visit their prawn grounds that fall within the cod protection area, if they catch any haddock as a bycatch—as they are bound to do—they have to throw the dead fish overboard. That is what they are instructed to do by this order. They are instructed to throw haddock overboard—dead—when they catch prawns, despite the fact they are next to haddock grounds.

12:00

The situation in Shetland is even worse. The e-mail that I received from Shetland fishermen last night clearly illustrates the problem facing them. This e-mail has to be read to be believed:

"The biggest problem for a Shetland boat taking a permit will be the limitation to have a by-catch of cod of no more than 5% at any time."

Before I proceed, I remind members that we are talking about areas outwith the cod protection area.

"If you were to take a permit and get a haul of cod during your first fishing operation you would have to dump the fish over the side or risk prosecution and the withdrawal of your permit for the remainder of the year. If you don't take a permit the opposite is the case and boats can fish where they like but will be restricted in the volume of haddock they can retain as they will be fishing the smaller percentage. The average cod catch within the Shetland fleet last year ranged … between 8 and 20%. To sum up we will be dumping cod if we take a permit or dumping haddock if we don't take … a permit. Either way we lose out."

That is the message from the Shetland fleet, which is facing bankruptcy if it sticks with the rules. If it sticks with the instructions from the European Union, which will be implemented in Scots law by the order, the Shetland fleet will be instructed to dump stock overboard.

The next key issue is protecting lives at sea. Safety at sea would be completely jeopardised by the draconian system that the order seeks to implement in Scots law. There is no provision whatsoever—whatsoever—in the order or in the European legislation that it seeks to implement in Scotland that provides for safety at sea. There is no provision that says that fleets will not be penalised in terms of days if they shelter from bad weather or answer distress calls. We have verbal assurances from the minister—as one of the other MSPs pointed out—but there is nothing in the legislation.

In fact, the situation is worse than it was last year. Paragraph 13 of the so-called annex XVII, which is the European regulation from which the order flows, states:

"A Member State shall not count against the days allocated to any of its vessels under paragraph 6 or paragraph 9 any days when the vessel has been absent from port but has been unable to fish due to exceptional circumstances including mechanical breakdown or adverse weather conditions. The Member State concerned shall provide justification to the Commission of any decisions taken on this basis."

The new annex V, which succeeds annex XVII, does not have that paragraph, so the order implements European legislation that risks Scottish lives at sea, and sends mixed messages to the white-fish fleet and to other fishermen at sea. I do not believe that the committee would want to support such a situation.

Last night, an Orkney boat landed in Aberdeen, having lost four days at sea through sheltering from bad weather. The vessel concerned sheltered next to an oil rig, called the minister's department, pointed out that the weather was appalling, and asked not to be penalised for the days. Witnesses from the oil rig were on hand to verify the state of the weather conditions. I have not spoken to the skipper directly, so this will have to be confirmed, but I was told this morning that the department's response was that it was not interested in his appeal.

I draw members' attention to Hamish McPherson's e-mail, which has been circulated to all committee members. His son is at sea. He said:

"I personally am going through a very traumatic time at home every time there is bad weather … I hate to use language like this, but there is going to be loss of life out there".

Surely the committee can reject the order and ask the minister to bring forward a replacement that guarantees safety at sea.

The order is flawed. I mentioned that it contains no guarantee of safety at sea. The letter and accompanying memo from the Scottish Fishermen's Federation that have been circulated to committee members highlight the fact that, due to an error, fishermen are excluded or banned from fishing in some fisheries that were not supposed to be covered by the order. I believe that to be another consequence of the fact that there was no formal consultation with the industry prior to the order's being laid.

Let me make two final points. First, stocks are healthy. I have detailed the bizarre, complex and draconian measures that apply only to Scottish vessels in Scotland's traditional fishing grounds and not to foreign vessels that fish those same waters for the same stocks. Those measures are being implemented against the backdrop that haddock stocks are at a 30-year high and cod stocks are recovering. The cod quota that was given to the United Kingdom and Scotland was even rolled over.

Against that backdrop, despite the fact that there are fewer vessels at sea due to decommissioning, the situation today is worse than it was last year. As a consequence, the economic future for the fleet at sea and for the onshore sector is bleak, and lives are being put at risk at sea. It is not as if there are no fish in the North sea. The North sea is teeming with fish, but the restrictions that the minister wants the Scottish Parliament to endorse do not allow the fish stocks off our own shores to be fished by our own Scottish fleet, which has made the biggest sacrifice of any fleet in the extent to which it has adopted conservation and decommissioning measures in recent years.

I remind the committee that its duty is not to pass bad law. All members have the duty to listen to our communities and to ensure that we take on board their concerns and respond to them. If that means rejecting a bad law and replacing it with a good law, so be it. That is why the Parliament exists. Our fishing communities are watching the outcome of today's committee meeting because they want to know whether their MSPs will stand up for them. MSPs should do their job as parliamentarians by throwing out bad legislation that endangers the economic future of Scotland's fishing industry, puts lives at risk and—ironically—jeopardises the future of the fish stocks that the legislation is supposed to conserve.

I urge the committee to support our fishing communities by supporting my motion.

I move,

That the Environment and Rural Development Committee recommends that nothing further be done under the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2004, (SSI 2004/44).

Eleanor Scott (Highlands and Islands) (Green): I will not support Richard Lochhead's motion. My decision not to do so has been far from automatic because I recognise the concerns of the fishing community and the issues that the fishermen have raised.

I cannot agree with Richard Lochhead's statement that the stocks are healthy. Cod is still causing concern. The numbers of haddock may be at an apparent 30-year high, but that is because of good recruitment in one year. If that is fished out, we could be back to square one, so I have on-going concerns about the fish stocks.

Having said that, I also have concerns about the poor conservation measures that we have instituted in the past. I know that the common fisheries policy has not had a particularly happy or successful history and that some of its conservation measures have not had the effect that was genuinely intended. As Richard Lochhead pointed out, things such as the discarding of fish are quite unacceptable. It would be nice if the European Commission would look at what happens in Iceland, where I understand there is a policy that anything that is caught must be landed.

It would also help us to know more about what is happening out there. There are moves to improve the science on which fisheries conservation is based. For example, it has been suggested that having observers on boats would clarify for us what boats are actually catching and what they can land.

I believe that we need to limit effort at the moment, so I look to the Executive for increased funding to support fishermen and fishing communities through these difficult times while stocks recover. The UK Government simply has not given enough money to support our fishing communities. I understand that a €37 billion fund of EU money is available for fisheries aid, but zero per cent of the aid that Scotland currently draws down from that is for socioeconomic aid and support. That is poor.

We ought to consider how we can support fishermen and fishing communities while stocks recover. After all, we have a history of paying farmers not to grow crops and paying landowners not to carry out developments in environmentally sensitive areas. Temporarily paying fishermen not to fish while stocks recover would be quite in line with that. I look to the Executive to take that forward. While we are in what I consider is a crisis of fish stocks—Richard Lochhead may disagree with me—fishermen and fishing communities must be sustained. I would rather that the pressure for supporting those communities fell on the Treasury rather than on the fish stocks.

Mr Brocklebank: I agree with the analysis of the overall situation that Richard Lochhead eloquently and persuasively outlined. I certainly agree with him that the deal that was struck in December of last year was a bad deal for Scottish fishermen.

Beyond that, I would draw attention to the minister's own words when he came to the chamber some time after that deal. He felt that he had got a deal, but that there were unintended consequences to that deal. That has been particularly difficult for fishermen to cope with. It was one thing being faced with what fishermen saw as a catastrophic deal in December, but to discover, three or four weeks later, that the minister himself had seen certain unintended consequences has contributed to the confusion over the agreement. We have heard about some of those unintended consequences this morning. We have heard about arguments over how the 15 days were arrived at, and whether or not accidents at sea, bad weather and so on—the examples that Richard Lochhead has graphically illustrated—are taken into account. I am not sure that any of us are convinced that fishermen will have those days recompensed if they go to the aid of a brother skipper who is in trouble.

As we have heard, there are arguments over the restricted areas for cod fishing, which are also restricted for haddock fishing. They are massive new areas. We were told that those were being considered within the flexible framework that the minister outlined. The hard fact is that we have no further information—that I am aware of—that there are major changes taking place to those restricted areas. I have sent a note to the minister on behalf of the Pittenweem fleet, which finds itself in the

utterly ludicrous situation, because of its particular gearing, that it is not allowed to fish for prawns in its traditional grounds, in case it takes a bycatch.

The whole thing is a fair nonsense. Despite the minister's assurances, it is extremely difficult to see how, if we stick with the order, the minister and his colleagues will be able to produce—like pulling a rabbit out of a box—the more flexible system that he has described. I have yet to have that explained to my satisfaction, or to the satisfaction of the various fishing groups that have written to me and phoned me this week. None of them has any faith in the flexibility that the minister has outlined. Since all sectors of the industry appear to oppose the measure, I cannot see why we should take the minister's word rather than theirs.

Stewart Stevenson: Richard Lochhead spoke eloquently, and I will not repeat what he said. I will, however, develop one or two of the points that have arisen in the debate so far.

I preface my remarks by repeating what I have said in the chamber on various occasions. No one is more committed to conservation than the Scottish fishermen. They are committed in practice, through the sacrifices that they have made, but they are also committed in their basic philosophy, because they wish to hand to their sons and grandsons a rich inheritance that can be harvested from the sea. Let us not pretend that the fishermen are contrary to conservation. Let us examine the measure before us and see whether it helps future generations of fishermen in our fishing ports. I find it quite bizarre to hear the Scottish Green Party member, who represents an anti-European Union and pro-conservation party, speaking in favour of an EU measure that is anti-conservation. She seems to imply that a 30-year high on haddocks is not sufficient for us to consider that there is a healthy stock there. She points, with some reason, to the good fortune of one particular year's recruitment.

In that connection, to what extent is the minister taking account of the experiences of the Faroese and their Icelandic adviser, Jón Kristjásson, who will be well known to many members present and who takes a different approach to conservation, and a very successful one? That approach involves managing and encouraging fishing in particular ways.

I turn to the legislation and its practical effects. The Shetlanders, denied access to the haddocks stocks in the cod protection area, are fishing inshore in the spawning ground of the haddocks and destroying future generations of recruitment to the haddock stocks, because they are forced to do so.

12:15

Allan Wilson: On a point of order, convener.

The Convener: I do not think that there is a point of order. I will let Stewart Stevenson finish his point and then hear yours.

Allan Wilson: Most of what Stewart Stevenson and others have said has got nothing to do with the order that is before the committee.

The Convener: Political points are being made.

Stewart Stevenson: I am sure that the minister will respond appropriately when his opportunity comes.

We can see the practical effect of what is happening. We are in the unusual situation of debating legislation that is, in effect, in force. Normally, we would be looking forward to an unproven effect of legislation. In the case of this Scottish statutory instrument, which is subject to the negative procedure, we are looking backwards and considering whether the effects that we can see are so unhealthy for conservation and for our industry that we should reject it. We do not like being in that position in the sense that we are already being hurt, but it is an opportunity that is normally denied us.

Yesterday in Peterhead, for the first time in 15 years, not a single haddock, cod, whiting, flat fish, monkfish, coley or any other white fish was landed. To some extent, that is the effect of the 15-days rule and of the fact that fishermen have to choose carefully when they go to sea, which leads to irregularity in supply to the market. The long-term danger of the measures that we are discussing today is that the market for high quality Scottish haddocks will be displaced by foreign haddocks. Peterhead also has a thriving export industry that is being affected by the legislation.

We have to consider whether the measure is genuinely helpful to conservation. Do we know how much discards have risen since this year's smaller fleet started to operate under these draconian measures? They have certainly risen and rising discards of cod and haddocks is hardly a pro-conservation measure.

The committee has the opportunity to withdraw the instrument and we have the opportunity to propose a better instrument. More fundamentally, there has to be a better regime from Europe. This is an opportunity for the minister to indicate that he will be able to deliver something better—as he so frequently asserts that he can.

The Convener: I have three other members lined up to speak: Karen Gillon, Rob Gibson and Alasdair Morrison. I will take Margaret Ewing as well. I am then going to let the minister speak and I will allow Richard Lochhead to wind up. If anyone

else wants to respond to anything that is said during the remainder of the debate, I will come back to them.

Karen Gillon: I understand fully why someone who represents a fishing constituency would be very emotional about the issue and about the potential impact that it would have on constituents. I disagree with Richard Lochhead's assertion that we have a duty to represent those constituents: we have a duty to do what is right, not what we are driven towards by our emotions. We have to consider all the facts and determine the right thing to do.

Some of the statements that have been made today are slightly confusing. If Scottish fishermen are the most pro-conservation fishermen that can be imagined, why are our fish stocks in the state that they are in today? That is a genuine question that we need to ask ourselves. Clearly, our fish stock has been over-fished in the past.

The other question that needs to be asked is contradictory in nature. If we have spent money on and taken a lot of pain in decommissioning boats so that we can increase cod stocks in the long term, why give the extra days to existing boats so that they can fish the new stock? Surely that is a short-term answer to a long-term problem if we are unable to increase fish stocks.

Genuine questions need to be asked. I know that the minister suggested in his opening comments that fishermen will not be penalised if they stop to help a ship in distress—everyone who has written to us has raised that matter. I do not want to be involved in passing legislation that will put lives in danger and penalise those who stop to help those who are in distress. The minister needs to give the committee clarification of the Executive's position on that issue.

Many of us around the committee table tend to take what people tell us at face value, so if people are not telling us the whole truth, the minister has a duty to tell the committee what the truth is. I look forward to the minister's comments, which I will listen to prior to making my decision on the annulment motion.

Rob Gibson: In respect of the cod protection zone and the haddock permit system, I have yet to hear an explanation from the minister as to why only Scottish vessels—not the foreign vessels that fish the same waters for the same stocks—are affected. On that subject, the threat to a number of our fisheries comes from the part of the common fisheries policy that allows vessels from other nations to fish in a fishery that should be reserved to Scotland; indeed, some of us believe that it ought to be entirely managed and controlled by Scotland.

We have to recognise that the order does not deal with what we want to achieve in the long-term. It is another indicator, however, that the hand-to-mouth approach is disadvantaging more and more sectors of the fishery around Scotland. It is hard for people in Pentland House or Victoria Quay to put themselves in the position of fishermen in the small islands in the Shetlands—they visit those parts of the country rarely and do not understand the culture that requires that fishing be a part of the make-up of the economy of such areas.

It is not being over-emotional to say that the regulations that we are being asked to pass today include issues that are obviously contradictory. Richard Lochhead talked about Shetland fishermen moving inshore and catching younger fish. The average cod catch of the Shetland fleet has ranged between 8 and 20 per cent, which is quite close to the point at which, with a few minor tweaks, the catch could be seen to be conserving cod.

The Shetland fleet has only 20 vessels now; it has lost 40 per cent of its carrying capacity over the past couple of years. For its fishermen to say, "We will have to dump cod if we take a permit, or haddock if we do not", is a statement of desperation: they can see no way out. By passing such an order, the Government is presenting many remote communities with the threat of extinction of an important part of their economy. That is not emotion. It is fact.

I was in Shetland a fortnight ago and I saw what happened to a catch of small, immature haddock there; the market did not want it, because it wants prime fish, so the haddock were sent for fishmeal. However, the fishermen are still forced to fish in order to maintain their boats and pay off their debts. Far from creating a conservation situation, the order will, through its effects, attack the very stock that we will rely on mature fish in the future. I ask the minister to consider whether the order will serve the fleets in Scotland in any way. I refer specifically to the Shetland fleet because it is hard for people in Edinburgh to realise how important fishing is to communities such as Shetland. I am sure that if we were talking about a steel works or a shipyard in larger communities in the centre of Scotland, there would be many people in the public gallery wondering why ministers were so prepared to sacrifice an important part of our economy's future.

The Scottish Executive's "Indicators of Sustainable Development for Scotland: Progress Report 2004" shows that the five stocks in our area that are within safe biological limits have increased in size and are recovering, as has been said. That being the case, what encouragement will the minister give to the fishing fleets to ensure that they will have stocks in the future, without taking away the effort that must be maintained if

there are to be any fishing fleets in small communities such as Shetland?

Mr Morrison: I will not support Richard Lochhead's motion and I will outline why. I listened to Richard Lochhead, to Ted Brocklebank from the Tory party and to Rob Gibson, who all damned the deal that was secured at the end of last year. However, none of them mentioned the simple fact that, as part of that deal, an additional £20 million-worth of fish stocks were secured. [*Interruption.*] Richard Lochhead can chuckle inanely at the back of the chamber, but that is a simple fact. There is the potential for catching an additional £20 million-worth of fish. That is a welcome element of the deal that was secured in Brussels at the end of last year.

I want to pick up on one of Rob Gibson's last points, when he made what was in my view an odious comparison between the situation that faces the fishing industry and fishing communities, with which ministers are dealing, and the situation of those who lived in former—I stress the word former—steel manufacturing and coal-mining communities. I assure Mr Gibson that the men and women in such communities who were affected by the closures of coal mines and the decimation of steel works did not receive £77 million over two or three years. I am no mathematician, but I reckon that, if the various aspects of the equation were factored in, hundreds of millions of pounds, rather than £77 million, would be due to former miners and steelworkers.

Effort control in all fisheries is necessary to protect the fishermen and the communities in which they live and work. Fishermen are hunters instinctively and the hunter, as we know, pursues his quarry relentlessly. However, as legislators, we must ensure that we protect both the hunter and the hunted. That is why we legislate as we have, and why we will continue to do so. As Karen Gillon said, our job as legislators is not to sit in the chamber and pursue favourable headlines that are here today and gone tomorrow. Our job is to act responsibly and to represent and protect fishermen and their communities.

12:30

The Parliament is a forum in which we can discuss and debate ideas such as the merits or demerits of public-private partnerships, the way we prioritise the roads structure over railways, hospitals or schools, or how we support the Gaelic language or crofters. That is all legitimate knock-about stuff on which different parties have different legislative or manifesto commitments. However, it really sticks in my craw when I hear members saying in the chamber and outside that Karen Gillon, Maureen Macmillan, Sarah Boyack, Nora Radcliffe, the minister and his officials and I come to the chamber to pass legislation that will put Scottish lives at risk. That is a ludicrous and outrageous assertion. I urge members who intend to make such charges to pause before doing so. Are they seriously saying that we as legislators—who belong to different parties—come to the chamber to create acts of Parliament and to agree to statutory instruments that will put the lives of fishermen who go to sea at risk? The charge that we endanger and sacrifice lives is scandalous. I hope that members will reflect on that.

The same charge was made when the committee debated scallop conservation some months ago. The spectre of unemployment was raised, as was the point that limiting the number of dredges that boats could tow would endanger fishermen's lives. That charge was wrong then and it is wrong today. Members should temper their language and consider seriously what they say. We saw what happened with the scallop industry last year: an armada of ships descended on the fishing grounds west and east of my constituency and plundered those grounds. A year's fishing was done in three weeks. Is that how we want to manage our scallop, prawn or white-fish fishing grounds? That is not the way sensible and mature legislators have to behave. Last autumn, we legislated in the face of fierce opposition, but it was the right thing to do. Today, the scallop stocks are being conserved, prices have increased and the men who go to sea have a good deal. Those men fish safely in dangerous waters and return to port with good catches, which means that the processors have structured and consistent work.

I genuinely applaud the three nationalists who have spoken for not urging fishermen to break the law. That is a welcome departure from the position of their leader, John Swinney. Stewart Stevenson said that fishermen are conservation minded—if only that were the case. As I said, fishermen are instinctively hunters; we have a duty to protect them from themselves and to protect the communities in which they live and work. If fishermen were conservation minded, there would be no need for laws to regulate fisheries and skippers would simply say, "Okay boys, we've caught enough for this month, let's head for port." However, that is not the situation—fishermen are instinctively hunters.

Our job is to legislate, which is why I will not support Richard Lochhead's motion. As the minister said in his short speech, a lot has been stated today that has absolutely no bearing on the subject that we are supposed to be debating.

Mrs Margaret Ewing (Moray) (SNP): My speech will be short and measured, particularly because I am slightly concerned about the condition that Alasdair Morrison appeared to be in

when he made his speech, which was a rant. It is all very well to talk about the additional stocks that were allocated in the deal in December, but given that fishermen are denied the opportunity to harvest the benefits of that additional allocation, it is strange for Alasdair Morrison to say that everything is hunky-dory.

Karen Gillon and Alasdair Morrison spoke about emotion. Those of us who represent constituencies that are involved in fishing, which includes a huge number of members of the Scottish Parliament and members at Westminster, are talking about the economic facts of life in our communities. I have heard members such as Karen Gillon arguing strongly and with great passion about the impact of issues and events in her constituency.

As representatives of fishing and other communities, we have the right to speak strongly about the real concerns that people bring to us in our surgeries and through various lobbying representations. I speak as someone who has represented a fishing constituency for 15 years and I have seen what fishing communities have gone through every December as they have waited for the results of the fisheries council. I have seen the despair that that has been brought to those communities. There have been good years and there have been bad years, but I would say that last year's news was the worst. It is not just anger that is now seeping through the whole fishing community; a loss of confidence and despair is now in the hearts of all our communities.

I wish to pick up on some points that have been raised in the course of the debate, especially in what the minister said. Like other members, I welcome the four new ports. I am glad about that. It might be a consolation to many of the fishermen who will be attending Hugh Allen's memorial service this Saturday in Oban. The minister made a brief reference to industrial fishing, but I did not quite catch what he said about some development that will address the whole issue of industrial fishing.

The importance of the food chain in the North sea has been a hobby-horse of mine. At one time, the natural food chain was being denied to native species in the North sea because of the reduction in stock, which was caused by the practices of other countries.

The minister spoke a lot about flexibility, but the permits scheme is a bureaucratic nightmare. I have sat with skippers and gone through the process that they must observe to ensure that their permit is granted. I have been told what they can and cannot do, which ports they must report to and so on. The scheme is a bureaucratic nightmare that will use up the valuable time of skilled people.

Negotiations continue and the minister and his colleagues have found out that the devil is in the detail of the December agreement. We have heard about tweaking here and there, but when are we going to see a final package? We keep being told that everything will be agreed this week—but we then get into the next week and everything has not been agreed.

I agree with Ted Brocklebank: we are between the devil and the deep blue sea. A motion is before us, yet we are told that advances might be made that will make the deal more acceptable. The arguments that have been propounded by Richard Lochhead are important, and we need to see the full details before Parliament takes what will be a very important decision on the future of our fishing industry. I thoroughly recommend the arguments that he has put forward.

Allan Wilson: The important point is one that I sought to make in an intervention. Having been prevented from addressing some of the issues that arise from the proposed haddock management regime, I point out that most of what Richard Lochhead and other nationalist members have said has nothing whatever to do with the order that is before the committee today.

There is undoubtedly a place for political posturing in the Parliament, but I respectfully suggest that it is not in committees' earnest consideration of statutory instruments. Annex V, which the statutory instrument that is before us deals with, is nothing to do with the haddock management arrangements. It applies to all member states that are using the same gear as Scottish boats. The thrust of the argument—that the order is somehow discriminatory—is therefore simply fallacious.

As for the force majeure provisions and the important matter of safety at sea, the force majeure provisions in annex XVII were introduced only in April last year. The situation this year is no different. When Richard Lochhead abstained on the specific provisions last year, he did so in their absence. I could not be any clearer on safety at sea, and our position on force majeure is clearly stated in the guidance that we give to fishermen. Any discounting of days under circumstances of force majeure is done first by administrative provision, as has been explained. That happened on more than 200 occasions last year, and it has happened on a number of occasions—going into double figures—this year.

When and if the Commission makes amendments to annex V to reintroduce the force majeure provisions, we will duly implement them. Meanwhile, we will continue with the pre-existing administrative arrangement. There is no question of ministers or the committee jeopardising safety at sea.

The order relates to days at sea. As I said in response to the only nationalist who understands what is going on—Stewart Stevenson—some of the additional four days in 2003 were awarded in advance of decommissioning and were taken into account in the subsequent calculation. I am happy to write to Stewart Stevenson, as I will to the Scottish Fishermen's Federation, to explain that process of calculation. I may not be happy with the outcome of the calculations at Commission level, but I am determined to be fully transparent in advising members how those calculations were made. We will agree that a kilowatt-day proposition is a better way to approach effort limitation in the protected area.

I could go on at great length about haddock management. As Stewart Stevenson and other members know, we have made representations in relation to the dimensions of the cod protection zone. We preferred a haddock management box. We want to ensure that the extra quota that we successfully secured at the December council is fished profitably by the Scottish fleet. Decoupling—dare I say it—was supported by the fleet as a way of getting round the proposed closure of the North sea fishery to protect the cod stock. Decoupling and the haddock management proposals that ensued are a direct result of that proposition. We have avoided closure of the North sea fishery, decoupled haddock from cod and we have additional quota for our hard-pressed fleet. Failure to reach agreement in the EU on the haddock management scheme would have led to even more draconian cutbacks in fishing effort, further decommissioning and less opportunity—financial or otherwise—for the Scottish fleet.

I do not want to say too much more on haddock management. People who are in the know will know that it is not relevant to the order and that it will change—I expect proposals to that effect to be produced shortly. Extra haddock and nephrops will be catchable in Scottish grounds as a consequence, and the extra revenue that ensues is implied by that statement and should not be dismissed with a chuckle by Richard Lochhead, because it will help to secure the financial and economic future not just of individual boats, but of the Scottish fleet and the sustainable fishing communities to which Eleanor Scott referred.

The order provides for a choice of management periods of up to 11 months, thereby offering fishermen more flexibility in management of their fishing operations, notwithstanding the disputes that we might have about whether 15 days are sufficient for that purpose. The order enables the transfer of days between vessels, which would not be possible otherwise. Critically, the order also introduces derogations that release more than 320 Scottish vessels from restrictions on their days at sea when they use certain fishing gears. The haddock management zone is applicable to Scottish or UK boats because we take more than 70 per cent of all haddock that is caught there. In the cod protection zone, the figure is more than 90 per cent. As a result, the haddock management proposals are necessary conservation measures that have enabled decoupling of haddock stocks from cod stocks.

12:45

The derogations on permitted days at sea, which committee members will decide on today, include vessels that in 2002 had a low bycatch of cod, sole or plaice. Those vessels will get extra days at sea; indeed, they will be able to fish under an unrestricted regime. For example, there will be unlimited days at sea for white fish and nephrops fishermen whose cod bycatch was less than 5 per cent in 2002. It is clear that the provisions are directly related to conservation of the all-important cod stock.

Indeed, that is what the committee is voting on today: additional flexibility for the fleet; the transfer of days between vessels; and derogations that protect cod stocks and release 320 Scottish fishing vessels from restrictions on days at sea. That—dare I say it—provides a better way forward for the sustainable management of our fishing resource, which in turn sustains the fishing communities that depend on it. I am determined to achieve that aim, irrespective of other members' political posturing.

The Convener: I call Richard Lochhead to wind up on his motion.

Richard Lochhead: I will be relatively brief, convener.

Karen Gillon admitted that she did not understand the issue. She has until 26 March to annul the instrument, which gives the committee plenty time to hear directly from the industry and to learn about some of the issues. I was slightly concerned when Karen Gillon said that she appreciated why those who represent fishing communities feel strongly about the issue. That somehow suggests that those who do not represent fishing communities do not necessarily have to have strong feelings about the matter. As parliamentarians, we all have to consider the national interest; that is what the public expect us to do.

I have no intention of rising to Alasdair Morrison's bait. It is quite clear that he wants to live in a world with no Opposition parties and politicians or—by the sound of things—fishing industry.

The key point that I want to address was made by Eleanor Scott. I appeal to Eleanor as a member

of the Scottish Green Party to recognise that my motion is in the interests of fisheries conservation. Indeed, I would be perplexed if a Scottish Green Party member supported legislation that forced fishermen to discard healthy fish overboard when there are quotas for those fish. The situation is bizarre and anyone who is interested in promoting fisheries conservation should think about supporting the motion. I remind Eleanor Scott and the rest of the committee that we are talking about a cod recovery plan. Although the basis of the proposed legislation is to protect cod, it will block cod recovery.

In recent weeks, the minister has made lots of promises about amendments, changes and on-going discussions. However, although the deal was signed in Brussels 10 weeks ago, fishermen still do not have a clue what is happening. The regime came into force four weeks ago, which means that the fishermen have been asked to operate under a regime that is plagued by uncertainty and potential change but which, in the meantime, is threatening to make them bankrupt. It would be much more sensible for the committee to urge the minister to introduce new legislation that contains guarantees in black and white and reflects the appropriate changes that have been agreed in Europe.

I am sure that fishing leaders, who are following this debate from the gallery, expected more from committee members. However, we must be able to send them the message that we are listening to their case—after all, such an approach is partly why the Parliament was created five years ago. I remind the committee that we are not talking just about fishermen at sea; the debate is also being followed by the onshore sector, which includes fish processors, the many harbour businesses that are directly related to the fishing industry and everyone with a family member who relies on fishing. They point out, quite rightly, that politicians take the decisions and that they are the ones who are not delivering justice and are making life difficult for them.

The roof will not fall in if the committee rejects this order. Indeed, the purpose of having the ability to lodge motions of annulment is to annul SSIs. As a result, it is perfectly legitimate for the committee to pursue that option. All that would happen is that the minister would be forced to come back in a few days' time with a better order that would, I hope, protect the industry's future. The order that we are debating was not laid until 4 February; the roof did not fall in on us on 1, 2 or 3 February when the legislation was not in place to enforce a regime that had already been introduced. It would be perfectly possible to reject the order today.

The Parliament's job is to reject bad laws and replace them with good laws. The committee has an opportunity to do that. I hope that a Scottish Parliament committee will not support a piece of legislation that discriminates against Scotland and I urge the committee to support the motion.

Rob Gibson: On a point of order, convener.

The Convener: I am told that we do not have points of order in committees. What do you want to say?

Rob Gibson: I would like clarification. Do we have until 23 March to discuss the matter?

The Convener: We must report to the Parliament by 15 March. If the committee cannot conclude its consideration of the matter today, it could do so at a future meeting.

Rob Gibson: Would it be possible to hear evidence? I am in your hands in respect of whether it would be good to do so.

The Convener: I seek members' views on that. I think that we should put the matter to a vote, but if there is an overwhelming urge to do something different—

Mr Morrison: On a point of clarification, convener. When would we vote?

The Convener: I was about to take a vote, unless members want to delay consideration of the matter and to take extra evidence, which I would be against.

Roseanna Cunningham: I suggest that the committee should allow a period for taking evidence so that we can hear directly from those concerned in the industry.

The Convener: The question is, that the committee agrees to defer further consideration of the motion in order to take oral evidence from interested parties. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Cunningham, Roseanna (Perth) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)

AGAINST

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Scott, Eleanor (Highlands and Islands) (Green)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Proposal disagreed to.

The Convener: The question is, that motion S2M-937, in the name of Richard Lochhead, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Cunningham, Roseanna (Perth) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Johnstone, Alex (North East Scotland) (Con)

Against

Boyack, Sarah (Edinburgh Central) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Radcliffe, Nora (Gordon) (LD)
Scott, Eleanor (Highlands and Islands) (Green)

The Convener: The result of the division is: For 3, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: I thank the minister and his officials and invite them to withdraw. The minister will be invited back shortly for agenda item 4.

Registration of Establishments Keeping Laying Hens (Scotland) Amendment Regulations 2004 (SSI 2004/27)

The Convener: The next item on the agenda is consideration, under the negative procedure, of the Registration of Establishments Keeping Laying Hens (Scotland) Amendment Regulations 2004 (SSI 2004/27). This is a new statutory instrument, although members will recall that we debated the topic last month. This is the revised statutory instrument that we requested.

The Subordinate Legislation Committee has considered the instrument and drawn our attention to a number of points. Extracts of that committee's report have been circulated to members. I have read the report and am not surprised that members have no comments to make on the instrument. There are conflicting legal views.

Are members content with the instrument and happy to make no recommendation to the Parliament?

Members *indicated agreement.*

The Convener: Members have a couple of minutes in which to take a comfort break while we invite the minister back. We can catch our breath before we consider reform of the common agricultural policy. We will need to have a fairly focused discussion, as we are allowed to be in the chamber only until half past 1.

12:53

Meeting suspended.

12:58

On resuming—

Common Agricultural Policy Reform

The Convener: Agenda item 4 is consideration of reform of the common agricultural policy. We must leave the chamber by half past 1. I suspect that members would also like to go for lunch at some point.

We agreed at a meeting in January to invite the minister to give oral evidence on the implementation of common agricultural policy reform in Scotland, which slots in comfortably with the beginning of our inquiry into CAP reform. That inquiry will include scrutiny of the 2005-06 budget process.

We are looking for thoughts from the minister on the issues that relate to the implementation of CAP reform, options that are available to the Executive and the implications of the selected options. The minister has made an announcement about the initial stages of where we are going. We have Scottish Parliament information centre briefings on the implementation of CAP reform and rural development, which have been circulated to members.

I welcome the minister and his officials and invite the minister to lead off.

Allan Wilson: Thank you. Obviously, I am conscious of the time.

The Convener: I suppose that you can be relatively brief, for all our sakes.

13:00

Allan Wilson: That is a fair point, of which I am conscious. The problem is that CAP reform is a complex matter. Arguably, it will influence the future direction of agriculture policy in Scotland and its strategic objectives for generations to come. For that reason, the issue is important.

We announced three main decisions. The first was full decoupling, with a single farm payment based in most cases on the subsidy reference period 2000 to 2002. That includes early decoupling in the dairy sector. The second was the use in principle of the national envelope, although for the beef sector only. The third was the intention to move the total rate of modulation—European Union compulsory and national combined—to at least 10 per cent by the end of 2007. That decision is subject to review later this year, once the provisions of match funding are known. I added that caveat at the time that the announcement was made.

I will discuss each of the three decisions briefly. Full decoupling is not easy to say, but it was an easy decision to take—probably the easiest of the three. Agreement on the issue was reached fairly early. A consensus was quickly achieved that full decoupling was the way forward. It is also the most important element in the package. It will mean that, instead of responding to scheme rules and all the accompanying bureaucracy, farmers will respond to market signals and consumer requirements. That is a fundamental underlying objective of our wider strategy.

We have decided that the payment should be calculated on an historic basis. We reflected on the alternatives—as members know, there was no consensus on how the payment should be calculated—and came down in favour of using the historic base, as opposed to an area or hybrid base. A transitional period from historic payments to area-based payments is possible, with different regimes for different regions; that is the route that colleagues south of the border took. However, we have a different structure and different types of agriculture from those in other parts of the UK. Our decision was based on the need for short-to-medium-term stability and the avoidance of a radical redistribution of payments. Not everyone necessarily supports that approach, but the overwhelming majority of people will support the use of the historic reference base. I can go into that issue in much more detail, if members wish.

I turn to the second issue—that of the national envelope. There has been less than universal support for use of the envelope, even in the beef sector. However, I argue that the beef sector faces some short-term uncertainties, not least continuing export constraints. There may be a longer-term need to support beef, for environmental purposes as much as anything, because the grazing of beef cattle is important for maintaining habitat and environmental features, especially in fragile areas of the north and north-west.

Many respondents to the consultation wanted the scheme to be funded under the rural development regulation. However, when it comes to a specific environmental scheme for cows under the RDR there are questions about the availability of funding and contention for support, given all the other measures that are vying for rural development support. It remains unclear whether we will be allowed to operate the envelope provisions on a short-term basis, although we will press for that in the on-going negotiations on EU implementing legislation. Consequently, final decisions on the shape of the national envelope scheme for beef will be taken in the light of further discussions with interested parties and after EU implementing legislation has been agreed. We are consulting the European Commission on the issue. That is a brief synopsis of the current position.

Modulation is probably the most controversial issue and has given rise to most discussion among everyone involved. The decision to aim for a combined rate of at least 10 per cent by the end of 2007 will mean—as I said in response to a question from the convener—that around £40 million of additional money will be available through pillar 2 in 2007. Modulation provides an underlying rationale for agricultural support, because through well-designed schemes we get the agri-environment and rural development measures that allow us to target resources better. The key is how that additional money is spent. We must build on the progress that we have undoubtedly already made, and I argue that we must improve access to the funding. We must ensure that measures are opened up to modulated funding and that we maximise the outputs and develop delivery systems that will widen that access. In that context, the land management contracts model is the preferred method.

As many members will know, on 19 February we announced a three-month consultation on the cross-compliance arrangements for Scotland, which relate to the environmental and good farming conditions that farmers must meet to receive the single farm payment. Those arrangements are obviously critical to delivering improvements in the general environmental standard in farming practice. The legislative requirements under cross-compliance include existing EU rules on the environment, identification and registration of livestock, public, animal and plant health, and animal welfare in areas such as the protection of calves, pigs and other farm animals.

In addition to the legislative requirements, farmers will be required to maintain land in good agricultural and environmental condition. In line with the discretion that is allowed within the European framework, we have been developing a draft set of conditions that are appropriate for Scotland. We believe that the conditions that we have developed with stakeholders are demanding but fair. We have adopted a practical, commonsense approach by providing a clear set of measures for land managers, as well as for regulators and others with a wider interest in rural development and environmental standards.

Future farm payments require a rationale for succeeding generations. Improving environmental standards through cross-compliance is an important element of that rationale. Those developments—high environmental and good farming practice standards—are here to stay and will be an integral part of the land management contracts process.

As I have already said here in the chamber, the announcement on CAP reform represents the beginning rather than the end of the process. During the next few months, we will be finalising the implementing legislation, developing and amending the Scottish rural development plan in consultation with interested parties and continuing with the development of the land management contract model and the detailed development of the national envelope scheme to which I referred briefly. As a preamble to all that, we will write to all producers this spring to start the process of establishing entitlements.

Given the constraints on time, I have provided a brief résumé. I will be happy to answer questions on any of the aspects that I have discussed, or even on matters that have not been mentioned.

The Convener: Thank you very much. A forest of hands has popped up instantly. I will let Alex Johnstone ask a question, because he has said hardly anything so far today.

Alex Johnstone: We are on to my subject now.

I know that, in effect, all developments in CAP management have been time limited, even if that was not the case at the outset—history shows us that they have not lasted very long. For how long do you anticipate that the structure of the single farm payment to farm businesses will last? When will the process of adjusting that structure take place? The paper that we have on the subject indicates that it would be ridiculous for us to reach the stage at which we were basing everything on something that was 20 years out of date, but I have a farm business at home that is still hamstrung by quota regulations that are based on a 21-year-old snapshot, so I know from personal experience that that can happen. What views do you have on the future management of the new structure?

Allan Wilson: I suspect—indeed, I know—that my views are very similar to yours. In coming to a conclusion on whether to opt for an historic or an area-based system of payment, or for a hybrid of the two, the big question was for how long into the future we anticipated that the single farm payment would continue on an historic basis without any reference to the area of land under jurisdiction. That question was about how long a piece of string is.

As you said, in theory, the system could go without review until 2012 or thereabouts, which is a long time from now. We are in the Commission's hands, but it is fair to say that we expect a mid-term review, because the same questions are being asked in other member states throughout the EU, especially because of enlargement. We expect a mid-term review and will argue with other member states for such a review, but we are in the Commission's hands.

Alex Johnstone: Will that review be driven by political will or simply by budget problems?

Allan Wilson: The review will probably be driven by a combination of those factors. The overall availability of farm support finance or rural development measures in the EU might decline because of enlargement. Allied to that, the concern that member states might have that the historic reference period was less relevant as time passed would lead to pressure for a mid-term review.

Jim Wildgoose (Scottish Executive Environment and Rural Affairs Department): We are in touch with the Commission, which is charged with producing reports on various matters, such as cross-compliance, before 2009. In producing those reports, the Commission is likely to take a more general look at what is happening. A date has not been set formally for a review, but the Commission will have to produce reports on how various aspects of the proposals are working. The main impetus for the timing of a review is likely to have more to do with how the fundamental changes work in the next three or four years. As I said, the changes are big. Historically, a review has taken place roughly after five years. However, that is not written down in detail.

Mr Morrison: I will follow up Alex Johnstone's point about the historic system versus the area-based system. Will the Executive consider doing different things in different parts of Scotland? For example, could a different formula be used in the Scottish islands from that which is favoured on the mainland?

Allan Wilson: Schemes that were relevant to different parts could be developed. Our decision about whether to go for an historic or area-based scheme instead of a hybrid scheme was designed partly, as I said, to ensure that Scottish concerns were addressed in the interim, such as peripherality in respect of the national envelope and the large amount of land that has less favoured area status.

Jim Wildgoose: The decision to go with the historic arrangement applies throughout Scotland, but opportunities arise from the detailed arrangements within the national envelope and from the modulation money to take measures for different regions. That work has started and will continue intensively in the next few months.

Roseanna Cunningham: I have heard Jim Walker from Quality Meat Scotland say slightly mischievously that what he calls the bottom third of the beef sector is unsustainable and should be out of business—that has received a mixed response from assorted farmers. How do you see the decision on the national envelope for beef

working, minister? What exactly do you want to do? Do you agree with Jim Walker that more serious issues need to be addressed?

Picking up on what Alex Johnstone said, I have a forward-looking question about EU funding. We have long held the view that France, Germany and Spain get the lion's share of CAP reform money and that the CAP is of most benefit to those countries. Indeed, the table in one of the Scottish Parliament information centre briefings shows that in pretty stark terms. You have said that you will press for better European funding for rural development measures. What will your arguments be on the subject in the future? Two aspects are involved: the issue of the UK in Europe and that of Scotland in the UK. I will be interested to hear what you have to say on the subject.

13:15

Allan Wilson: I will take the question about the national envelope first. Like Roseanna Cunningham, and perhaps Jim Walker, I share the concern that the effect of the introduction of the national envelope was to break the decoupling effect of our move away from subsidising production and making it more market oriented.

The corollary of that argument is the environmental and peripheral benefits that areas of the north and west would have lost without the provision and the desire to have short-term sustainability for the beef sector. The latter argument played with Mr Finnie prior to his departure. He wanted to ensure that the beef market was sustainable in the short term and that we were able to meet our short-term market demands for the product, which might otherwise have been jeopardised. We made our response to secure sustainability in the beef market and, from my perspective, to ensure that cattle production was maintained for sound environmental and other reasons in the peripheral north and west.

On the big questions that Roseanna Cunningham and Alex Johnstone raised, I am not sure that I am in a position to speak on what is likely to happen in the EU over the piece. We discuss those matters with our UK counterparts. We did so in advance of coming to the decision in effect to do something different in Scotland.

Roseanna Cunningham: I do not think that we expect you to say what the outcome will be. Given that you have stated that your intention is to press for better funding, how will you argue our case? Will you make the argument in the UK only, as a case for a share of UK funds, or will you press for the case to be made in Europe—or is it both?

Alastair Sim (Scottish Executive Environment and Rural Affairs Department): The UK has recognised collectively that its share of rural development funding from the EU is unfair. That share was based historically on what we spent on rural-development-type measures way back in the 1980s and 1990s. The Scottish Executive and the UK Government are keen to have that position redressed. We are knocking hard on the Commission's door, saying, "Look, next time round, in the period that begins in 2007, can we get an allocation that is a fairer reflection of our aspirations to spend more on rural development measures, which is where we see our sustainable future going?" We do not know what the outcome will be. It is a bit of a zero-sum game: if we get more, someone else will get less. However, we are knocking on the door pretty hard.

Allan Wilson: The Executive's position, with which I am sure Roseanna Cunningham would agree, is for long-term growth in rural development measures beyond 2007. That will depend on a host of factors: the French and German positions, among others; changes in ensuing EU budgets; and, of course, the future of match funding. As the committee knows, at the moment we get pound-for-pound funding from the UK Treasury.

Nora Radcliffe: The single farm payment based on historic assessment was broadly welcomed in my area. You rightly said that it would give us a period of stability, but we should use that period for giving some serious thought to how we support agriculture. How are you engaging the industry in that? People have raised the matter of equivalent industries in other EU countries. On the historic farm payment, is there a mechanism for people to appeal the level of the single farm payment in individual cases where there might be exceptional circumstances in the reference years? There was qualified acceptance in my area that it might be necessary to use the national envelope to support the beef sector. Is there a way of monitoring whether that will be necessary and phasing it in? How can it be phased out? There is some anxiety that, if the scheme is not necessary, it should not be used. How will you evaluate whether it is necessary, and how long for?

Allan Wilson: I am pleased to hear that the single farm payment was welcomed in your part of the country. I went to the National Farmers Union Scotland conference, where the decisions that we came to were well received by the industry and by a wide spectrum of the people who were represented there. I recognise that, in the longer term, there should be an objective basis for agricultural support payments, and not simply an historic basis. Payments should be based on buying outputs—such as wider rural development or better environmental management—that wider society wants and not only on producer interests. We will be reviewing the decision on the historic approach at the earliest opportunity.

That takes us back to an earlier question. Yes, there is provision for appeal. My colleagues here are already busily engaged with producers, as they were at the conference, to ensure that the process goes as smoothly as possible—it could go horribly wrong if we do not have proper mechanisms in place. Generally speaking, the mechanisms will be the same as the ones that we had in place for the previous schemes, which provided for internal review and external appeal. However, there are a lot of people out there—not too many, I hope—who may wish to question, if not appeal, the basis on which their historic payment has been calculated.

The envelope was a short-term measure. We are engaged in discussing with the Commission, the industry and others exactly how it will work. We are conscious of the views out there about the efficacy of the measure.

Rob Gibson: First, can the minister advise us how discussions are progressing with Her Majesty's Government on the amount of modulation? Is there a timetable for those discussions? The previous year's budget referred to £22.8 million, which had been ring fenced to cover spending commitments based on a 10 per cent modulation. Has that funding been confirmed? I think that the minister mentioned the matter briefly, but I would be interested to hear a little more about that.

Secondly, I would like the minister to comment on the fact that the north, the west and the various island groups have different needs. Reflecting on an earlier question from Alasdair Morrison, I think that the needs of Orkney are quite different from those of the Western Isles and Shetland. There is a range of potential rural development regulation items that we have not yet used. What thought has been given to using food quality incentive schemes, food quality promotion, agri-environment and animal welfare schemes, investment in processing and marketing, and marketing of quality agriculture produce, which is, in large part, the reason for the support of agriculture in less favoured areas?

Allan Wilson: It is certainly one reason for it. To take the last point first, we are discussing with the parties concerned the development of precisely that approach as part of the wider societal benefit that we see coming from modulation. As far as the timescale is concerned, the guarantee is until 2005-06.

Alastair Sim: That is what came out of the 2002 spending review.

Allan Wilson: We expect to be in a position to make an announcement on the next spending review period after discussion at the UK level. In July, or at least around summer this year, we will know what is proposed in the way of future match funding and we will take a decision on levels of modulation thereafter.

The Convener: Rob Gibson has just mentioned quite a few of the opportunities to obtain different categories of financial support under the rural development regulation. We take few of those opportunities at the moment, so taking more of them is one possible way to go. The issue is the extent to which pillar 1 will become less important and pillar 2 will become more important over time; it is about how we maximise the opportunity of Scotland and the UK to get more money out of the EU for justifiable rural development objectives that are more integrated or more diversified and that allow farmers to do the mixed farming that we have begun to discuss, such as agroforestry.

Maureen Macmillan has raised the issue of the lack of abattoirs in the far north several times. That links into the more regionalised approach that can be seen in different areas of Scotland, but only where the rural development mechanisms and the funding sources enable farmers to go down that sort of diversified route. How does the Executive currently view the opportunities that could come from that sort of choice?

Allan Wilson: We see them precisely as opportunities for farmers to extend their activity. I was looking for the relevant statistic on that: 21 per cent of Scottish farmers are now involved in agri-environment schemes, compared with 16 per cent in Wales and 13 per cent in England. Moreover, 21 per cent of Scottish farm land is managed agri-environmentally, compared with 13 per cent in England and roughly the same proportion in Wales.

More modulation gives us the opportunity to extend agri-environment schemes. The benefit of match funding, which we have just been discussing, means that more money goes into those measures than is modulated from pillar 1 to pillar 2. Will that lead to an increase in the number of such schemes? I certainly hope so. Will it lead to an extension of those schemes? I am sure that it will with regard to developments in the organic sector, perhaps, or in forestry. Will it lead to greater participation? I sincerely hope that it will. The benefits of that will extend well beyond the producer interest to the wider interests of rural communities in general and it will promote a more sustainable system of agriculture, environmentally as well as economically.

The Convener: Those are the kind of issues that prompted us to undertake the review. We looked at the budget and found it difficult to work out where the money was going, as it was effectively parked in different categories, on which the Executive did not yet have permission from the EU to spend money.

Land management contracts are clearly the way in which to deliver many agri-environment proposals. What is the timescale for introducing them? Do you need to change the rural development regulation in order to be able to introduce land management contracts? Do you see the cross-compliance approach coming directly through land management contracts?

Allan Wilson: As far as cross-compliance is concerned, we viewed land management contracts not as the sole instrument of delivery, but as a principal instrument of delivery. Regional schemes could be developed to benefit certain areas, as opposed to individuals through contracts. I invite Jim Wildgoose to speak about the rural development regulation.

Jim Wildgoose: We believe that we can introduce through existing legislation arrangements that will be similar to the land management contracts. However, we doubt whether it would be helpful do that in one jump. We believe that we will need a transitional arrangement from 2005 under which we can move towards land management contracts. By that time, we will have seen the shape of the RDR review. The aim then would be to develop more fully the land management contracts from 2007.

Allan Wilson: Part of that process would obviously entail us engaging with the Environment and Rural Development Committee to get members' views on the process. It is important that we do that. The process should not consist of our determining something and then passing it down. We welcome the committee's views on how the process should continue.

The Convener: Perhaps we will explore that issue with the extensive range of stakeholders who will be speaking to us over the next few weeks.

Today's meeting has been good, because it has got us going on the topic. We will take up the minister's invitation to feed back to him a range of options about how we might proceed. The point of doing the report is to flush out choices and see what the different stakeholders think.

I thank the minister for coming along today and I also thank members for their patience and relatively good-humoured attitude throughout what has been an incredibly lengthy meeting.

Meeting closed at 13:31.

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