



Environment and Rural Development Committee

18th Meeting, 2004

Wednesday 30 June 2004

The Committee will meet at 11.30 am in Committee Room 3.

1. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Waste Management Licensing Amendment (Scotland) Regulations 2004, (SSI 2004/275);

the Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004, (SSI 2004/276);

the TSE (Scotland) Amendment Regulations 2004, (SSI 2004/277);

the Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004, (SSI 2004/278);

the Pig Carcase (Grading) Amendment (Scotland) Regulations 2004, (SSI 2004/279);

the Beef Carcase (Classification) (Scotland) Regulations 2004, (SSI 2004/280);

the Conservation of Seals (Scotland) Order 2004, (SSI 2004/283);

the Environmental Protection (Restriction on Use of Lead Shot) (Scotland) Regulations 2004, (SSI 2004/289).

2. **Work programme:** The Committee will consider its forward work programme.

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The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>The Waste Management Licensing Amendment (Scotland) Regulations 2004, (SSI 2004/275);</p> <p>The Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004, (SS1 2004/276);</p> <p>The TSE (Scotland) Amendment Regulations 2004, (SSI 2004/277);</p> <p>The Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004, (SSI 2004/278);</p> <p>The Pig Carcase (Grading) Amendment (Scotland) Regulations 2004, (SSI 2004/279);</p> <p>The Beef Carcase (Classification) (Scotland) Regulations 2004, (SSI 2004/280);</p> <p>The Conservation of Seals (Scotland) Order 2004, (SSI 2004/283);</p> <p>The Environmental Protection (Restriction on Use of Lead Shot) (Scotland) Regulations 2004, (SSI 2004/289).</p> <p>Extract from the Subordinate Legislation Committee's 29th Report</p> <p>Paper from the Clerk to the Subordinate Legislation Committee – <i>to follow</i></p>	<p>ERD/S2/04/18/1a</p> <p>ERD/S2/04/18/1b</p> <p>ERD/S2/04/18/1c</p> <p>ERD/S2/04/18/1d</p> <p>ERD/S2/04/18/1e</p> <p>ERD/S2/04/18/1f</p> <p>ERD/S2/04/18/1g</p> <p>ERD/S2/04/18/1h</p> <p>ERD/S2/04/18/1i</p> <p>ERD/S2/04/18/1j</p>
<p><u>Agenda Item 2</u></p> <p>A paper from the Convener is attached (<i>for Members only</i>).</p>	<p>ERD/S2/04/18/2a</p>

**Subordinate Legislation Committee
Extract of 29th Report, 2004**

The Committee reports to the Parliament as follows—

1. At its meeting on 22nd June the Committee determined that it did not need to draw the attention of the Parliament to the instruments listed in the Annexe to this report on any of the grounds within its remit.

2. The report is also addressed to the following committees as the lead committees for the instruments specified:

Environment and Rural Development	SSI 2004/275
	SSI 2004/276
	SSI 2004/277
	SSI 2004/278
	SSI 2004/279
	SSI 2004/280
	SSI 2004/283

Instruments subject to annulment

The Waste Management Licensing Amendment (Scotland) Regulations 2004 (**SSI 2004/275**)

Introduction

1. The Committee asked the Executive for comments on two points on these Regulations.

Question 1

2. The Committee observed that this instrument is the 17th amendment to the principal Regulations. The Committee asked the Executive what, if any, plans there are for consolidation and remaking on a Scottish-only basis especially as the commercial data bases now reflect changes made by each constituent part of Great Britain, which makes the Regulations particularly difficult to understand.

3. The Executive confirms that it is in the process of reconsidering not only the form of the Regulations but also their substance and that it hopes that a consultation on codification of the measures comprised in the Regulations will be held during 2005. The Executive's reply is reproduced at Appendix 5.

Report 1

4. The Committee readily appreciates that this is, as the Executive states in its response, a technically difficult and complex area of law and that, as a result, consolidation will not be an easy task and will take some time. **The Committee welcomes the assurance that work is in hand on this exercise and draws the attention of the lead committee and the Parliament to the Executive's response as providing the information requested.**

Question 2

5. The Committee again questioned the absence of a Transposition Note to assist the Parliament and its Committees in understanding the Regulations.

6. The Executive repeated that it is not the Executive's policy to prepare such a note on each transposition but that it will bear the Committee's comments carefully in mind for a future measure of this kind.

Report 2

7. The Executive's response is not unexpected. However, the Committee has never understood the Executive's continuing reluctance to produce Transposition Notes with instruments implementing Community obligations. The Committee again observes that such Notes have been required of UK Departments by Westminster for at least the last four years and, indeed, were often provided voluntarily as a matter of course for some time before that. Furthermore, they are surely useful to Departments themselves in ensuring that EC legislation is properly implemented.

8. The Committee therefore reports the instrument to the lead committee and the Parliament on the grounds that it was not accompanied by a Transposition Note.

The Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004 (**SSI 2004/276**)

Introduction

9. The Committee asked the Executive—

(a) why article 12(2) is thought necessary given section 16(1)/17(2)(b) of the Interpretation Act 1978; and

(b) to explain the wording of the exclusion in article 10(3) given the amendments made to the parent Act by SI 1999/1820 and the effect of SI 1999/1126.

10. The Executive accepts that sections 16(1) and 17(2) of the Interpretation Act 1978 apply to this instrument. The purpose of article 12(2) was to assist those using the legislation by making it clear on the face of the instrument that notwithstanding the revocation of S.I. 1989/2307 the latter instrument continues to apply in relation to criminal proceedings in relation to an offence under that instrument.

11. The Executive also accepts that the exclusion in article 10(3) of the Order is unnecessary but, in its view, will not cause any confusion to those using the legislation. The Executive will, however, amend the Order at the next appropriate legislative opportunity. The Executive's reply is reproduced at Appendix 6.

Report

12. The Committee observes that it is not considered good legislative practice to repeat the provisions of the Interpretation Act/Transitional Order in legislation

whether primary or secondary. Unnecessary provisions have no place in legislation whether primary or subordinate. Indeed, they may have an adverse effect in that they call into doubt legislation from which the offending provision has been omitted. **The Committee therefore reports the instrument on the grounds of failure to follow proper legislative practice in this respect.**

13. **On the second point, the Committee reports the instrument on the grounds of defective drafting, acknowledged by the Executive although, as the Executive claims, this is unlikely to affect the legislation in practice.**

The Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 (**SSI 2004/278**)

Introduction

14. The Committee asked the Executive two questions on this instrument.

Question 1

15. Regulation 4(4) (page 2) refers to an address “specified” by the Ministers. The Committee asked the Executive to explain how the address is to be specified.

16. The Executive explains that the relevant details of who to contact should they be dissatisfied with a decision will be included in the decision letter sent to a producer. The address for receipt of appeals was not specified within the body of the Regulations to avoid the necessity of amending the Regulations should the department responsible for administering appeals change location. The Executive’s response is reproduced at Appendix 7.

Report 1

17. The Committee does not suggest that the address for receipt of appeals should be specified in the Regulations. This clearly would be impractical for the reasons given by the Executive. In the context of regulation 4(4), however, the meaning of the word “specified” is unclear. As it is intended that the address for an appeal should be stated in the decision letter, it would have been clearer, in the Committee’s view, had regulation 4(4) provided that the appeal should be sent to the address specified in the decision. **The Committee therefore reports the instrument on the grounds that regulation 4(4) could be clearer in this respect.**

Question 2

18. The Committee asked the Executive to explain the reference in regulation 8(1) to a member of staff of the Scottish Ministers in relation to the powers conferred on the person hearing the appeal by paragraph (2) of that regulation. The Committee asked the Executive whether the express reference to a member of staff in that regulation means that reviews under regulation 5 and, in particular, hearings under paragraph (2)(c) of that regulation must be carried out by the Ministers in person.

19. The Executive explains the wording of regulation 8 is adapted from a similar provision in the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 for

producers in Scotland relating to the IACS and Agri-environment and Afforestation schemes. Under regulation 5 the review is an internal review. Members of staff of the Scottish Ministers, under the *Carltona* principle, are able to conduct such reviews. The review under regulation 8 is an external review by persons appointed by the Scottish Ministers. The provision, clarifying that members of staff of the Scottish Ministers may be appointed to act on this panel, has been included to put beyond doubt the legitimacy of a member of staff sitting on the panel at this second stage review.

Report 2

20. The Committee recognised the provenance of the Regulations and their similarity to the Regulations to which the Executive refers. Whilst the Committee is aware of the *Carltona* principle, its concern regarding the addition of a reference to staff in regulation 8 is that such a reference might cast doubt on the application of the principle in regulation 5.

21. There is nothing in the wording of regulation 8 to indicate that the review is external or that would bar the Ministers from appointing a member of staff. **The Committee draws the attention of the lead committee and the Parliament to Regulation 8(1) on the ground that its meaning could be clearer and to the Executive's response.**

The Beef Carcase (Classification) (Scotland) Regulations 2004 (SS12004/280)

Introduction

22. The Committee asked the Executive to explain the reference to "specified premises" in regulation 7(2) as it is not defined in the Regulations.

23. The Executive explains that the premises will be specified in the licence granted, under regulation 7, to the occupier authorising the occupier to carry out classification by means of automated grading equipment. The Executive's reply is reproduced at Appendix 8.

Report

24. The drafting of regulation 7(2) is very far from clear.

Regulation 7(2) provides-

"The Scottish Ministers may grant a licence to an occupier pursuant to Article 3(1A) of the Commission Regulation authorising the use of automated grading equipment for classification at specified premises in Scotland".

25. It is by no means self-evident that "specified" in that context means specified in the licence. It appears to the Committee that, on one reading, it suggests that the Scottish Ministers have specified a list of premises in respect of which occupiers may apply for and be granted a licence.

26. It is perhaps noteworthy that the equivalent English regulation in SI 2004/1317, which otherwise is in terms identical to the Scottish regulation, omits the word “specified” and refers simply to “premises in England”. It seems to the Committee that it would have been preferable had the Scottish Regulations followed that example.

27. The Committee therefore reports the instrument to the lead committee and the Parliament on the ground the drafting of regulation 7(2) could be clearer.

Appendix 5

THE WASTE MANAGEMENT LICENSING AMENDMENT (SCOTLAND) REGULATIONS 2004 (SSI 2004/275)

In its letter of 15 June to Catherine Hodgson the Committee asked the Executive for an explanation of the following matters:

1. The Committee observes that this instrument is the 17th amendment to the principal Regulations. The Committee asks the Executive what if any plans there are for consolidation and remaking on a Scottish only basis especially as the commercial data bases now reflect changes made by each constituent part of Great Britain, which makes the Regulations particularly difficult to understand.
2. The Committee also notes that there was no Transposition Note to assist in understanding the Regulations.

The Scottish Executive responds as follows:

1. The Department is already in the course of considering its approach to these Regulations for the future. It recognises the need to reconsider not only the form of the Regulations but also their substance. As the Committee will appreciate this is a technically difficult area which will require careful thought. It is currently hoped that a consultation on codification of the measures comprised in the Regulations will be held during 2005. It will be necessary for these Regulations to be amended again in the meantime, however, in order to meet Community obligations.
2. The Department notes the Committee's comments and regrets any inconvenience which the absence of a transposition note may have caused. As the Committee is aware it is not the Executive's policy to prepare such a note on each transposition but the Department will bear the Committee's comments carefully in mind for a future measure of this kind.

Scottish Executive Environment and Rural Affairs Department

17 June 2004

Appendix 6

THE INSHORE FISHING (PROHIBITION OF FISHING AND FISHING METHODS) (SCOTLAND) ORDER 2004 (SSI 2004/276)

On 15 June the Committee asked the Executive for an explanation of the following matters -

“The Committee asks the Executive why article 12(2) is thought necessary given section 16(1)/17(2)(b) of the Interpretation Act 1978.

The Committee asks the Executive to explain the wording of the exclusion in article 10(3) given the amendments made to the parent Act by SI 1999/1820 and the effect of SI 1999/1126.”

The Scottish Executive responds as follows:

First question

1. The Executive accepts that sections 16(1) and 17(2) of the Interpretation Act 1978 apply to this instrument. The purpose of article 12(2) is however to assist those using the legislation by making it clear on the face of the instrument that notwithstanding the revocation of S.I. 1989/2307 the latter instrument continues to apply in relation to criminal proceedings in relation to an offence under that instrument.

Second question

2. Given the amendments made to the parent Act by S.I. 1999/1820 and S.I. 1999/1126, the Executive accepts that the exclusion in article 10(3) of the Order is unnecessary. The Executive is grateful to the Committee for pointing this out. In the view of the Executive the otiose words will not cause any confusion to those using the legislation. The Executive will however amend the Order at the next appropriate legislative opportunity.

Scottish Executive Environment and Rural Affairs Department

17 June 2004

Appendix 7

‘ THE AGRICULTURAL POLICY NON-IACS SUPPORT SCHEMES (APPEALS) (SCOTLAND) REGULATIONS 2004 (SSI 2004/278)

On 15th June the Committee asked the Executive for an explanation of the following matters:

1. The Committee observes that regulation 4(4) (page 2) refers to an address “specified” by the Ministers. The Committee asks the Executive to explain how the address is to be specified.
2. The Committee asks the Executive to explain the reference in regulation 8(1) to a member of staff of the Scottish Ministers in relation to the powers conferred on the person hearing the appeal by paragraph (2) of that regulation. The Committee asks the Executive whether the express reference to a member of staff in that regulation means that reviews under regulation 5 and in particular hearings under paragraph (2)(c) of that regulation must be carried out by the Ministers in person.

The Scottish Executive responds as follows:

1. When a producer is issued with a decision the letter notifying that decision will provide the producer with the relevant details of who to contact should they be dissatisfied with the decision. The address for receipt of appeals was not specified within the body of the Regulations to avoid the necessity of amending the Regulations should the department responsible for administering appeals change location.

2. The procedure established by these Regulations mirrors that set up under the Agricultural Subsidies (Appeals) (Scotland) Regulations 2000 for producers in Scotland relating to the IACS and Agri-environment and Afforestation schemes. The wording of regulation 8 is adapted from those Regulations. Under regulation 5 the review is an internal review. Members of staff of the Scottish Ministers, under the Carltona principle, are able to conduct such reviews. The review under regulation 8 is an external review by persons appointed by the Scottish Ministers. The provision, clarifying that members of staff of the Scottish Ministers may be appointed to act on this panel, has been included to put beyond doubt the legitimacy of a member of staff sitting on the panel at this second stage review.

Scottish Executive Environment and Rural Affairs Department

16 June 2004

Appendix 8

THE BEEF CARCASE (CLASSIFICATION) (SCOTLAND) REGULATIONS 2004 (SSI 2004/280)

On 15th June the Subordinate Legislation Committee asked the Executive for an explanation of the following matter -

”The Committee asks the Executive to explain the reference to “specified premises” in regulation 7(2) as it is not defined in the Regulations.”

The Scottish Executive responds as follows:

The premises will be specified in the licence granted, under regulation 7, to the occupier authorising the occupier to carry out classification by means of automated grading equipment.

Scottish Executive Environment and Rural Affairs Department

17 June 2004