



Environment and Rural Development Committee

29th Meeting, 2004

Wednesday 8 December 2004

The Committee will meet at 10.00 am in Committee Room 2.

1. **Item in private:** The Committee will consider whether to take item 6 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - the Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004, (SSI 2004/488); and
 - the Sea Fish (Marketing Standards) (Scotland) Regulations 2004, (SSI 2004/498).
3. **Subordinate legislation:** The Committee will consider the following draft guidance—
 - The Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995, (SE/2004/257).
4. **Water Services etc. (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).
5. **December 2004 Agriculture and Fisheries Council of the EU:** The Committee will take evidence from Ross Finnie MSP (Minister for Environment and Rural Development) on fisheries issues to be considered at the December 2004 meeting of the Agriculture and Fisheries Council of the EU.
6. **Inquiry into climate change:** The Committee will consider a draft remit and suggested programme of evidence in connection with this inquiry.

Mark Brough
Clerk to the Committee
Direct Tel: 0131-348-5240

The following papers are attached:

<p><u>Agenda Item 2</u></p> <p>The Plant Health (Phytophthora ramorum) (Scotland) Order 2004, (SSI 2004/488)</p> <p>Extract from the Subordinate Legislation Committee's 41st Report</p> <p>The Sea Fish (Marketing Standards) (Scotland) Regulations 2004, (SSI 2004/498).</p>	<p>ERD/S2/04/29/2a</p> <p>ERD/S2/04/29/2b</p> <p>ERD/S2/04/29/2c</p>
<p><u>Agenda Item 3</u></p> <p>The Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995, (SE/2004/257)</p> <p>Extract from the Subordinate Legislation Committee's 42nd Report</p>	<p>ERD/S2/04/29/3a</p> <p>ERD/S2/04/29/3b</p>
<p><u>Agenda Item 4</u></p> <p>Members are reminded to bring with them copies of the Water Services etc.(Scotland) Bill.</p> <p>The Marshalled List of amendments will be published on Tuesday. The groupings will be available from document supply on Wednesday morning and will also be available at the meeting.</p>	
<p><u>Agenda Item 5</u></p> <p>Note from the Scottish Executive on the provisional agenda for the Agriculture and Fisheries Council of the EU, 21-22 December 2004</p> <p>Paper from SPICe (<i>for Members only</i>)</p>	<p>ERD/S2/04/29/5a</p> <p>ERD/S2/04/29/5b</p>
<p><u>Agenda Item 6</u></p> <p>Paper from the Convener (<i>for Members only</i>)</p>	<p>ERD/S2/04/29/6a</p>

SSI Title and No:	The Plant Health (<i>Phytophthora ramorum</i>) (Scotland) Order 2004, (SSI 2004/488)						
Laid Date:	10 th November 2004	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	John Speirs, SEERAD, ext. 46351						
Standing Order:	10.4 Subject to negative procedure within 40 days						
RECOMMENDATION							
Lead Committee:	Environment & Rural Development	Other Committees:					
Clerk Contact Room & No:	Mark Brough 85240	Clerk Contact No:					
Reason:	The purpose of this instrument is to implement amendments to the European Community emergency measures introduced by Commission Decision 2004/426/EC to prevent the introduction and spread of <i>Phytophthora ramorum</i> .						
Time Limit for Parliament to Deal with Instrument	19 th December 2004	1st SLC Meeting	16 th November 2004	SLC reporting deadline	30 th November 2004		
Lead Committee To Report By:	13 th December 2004	*Other Committees To Report to the Lead Committee:					
SSI Attached	X	Draft Motion Attached if Required		Date Motion and Designation Form E-Mailed to the Bureau		Laying Clerk Advised of Designated Lead Committee	

* 10 days before the lead committee reporting date. "Other" committees may wish to negotiate timing of their report with the lead committee.

Subordinate Legislation Committee

Extract of 41st Report, 2004

The Committee reports to the Parliament as follows—

1. At its meeting on 23rd November 2004 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 2004/488
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Instruments subject to annulment

The Plant Health (*Phytophthora ramorum*) (Scotland) Order 2004,
(SSI 2004/488)

Background

1. This instrument implements Commission Decision 2004/426/EC which amends Commission Decision 2002/757/EC which imposed controls intended to prevent the introduction and spread of *Phytophthora ramorum*, a serious fungal pathogen causing damage to trees and other plants.
2. Decision 2002/757/EC was implemented in Scotland by SSI 2002/223 and SSI 2002/483, which are both replaced by this Order.

Question 1

3. Article 5(1) provides that the material covered by that article must meet the requirements of Schedule 2 to the Order. That Schedule however appeared to the Committee to impose conditions only relevant to material covered by article 6. The Executive was therefore asked to explain the purpose and effect of the provision.
4. The Executive confirmed that the words “and meets the requirements of Schedule 2” had been erroneously included in article 5(1). The Executive considers that in practice this error will have very little practical effect because very little susceptible material originating in the USA or another third country is imported into Scotland. The majority of susceptible material imported into Scotland comes from England and the Netherlands and is grown from plants originating in those countries and as a result does not fall within the remit of article 5 of the Order.
5. The Executive, in addition, explained that guidance will be issued to the industry as a matter of urgency, which makes it clear that susceptible material originating in the USA or a third country which is imported into Scotland and subsequently moved within the Community only requires to be accompanied

by a plant passport. Plant health inspectors who have powers to enforce the Order are aware that only a plant passport is required when such material is imported into Scotland and then moved within the Community. The Order will be enforced in accordance with the provisions of Community law and the Executive therefore believes that there is no question that any person importing material covered by article 5 of the Order will be required to ensure that the material meets the requirements of schedule 2.

6. The Executive also explained that they believe that few difficulties are likely to arise as a result of the error and that it is therefore not necessary to bring forward an amending instrument as a matter of urgency. The Executive has undertaken, however, to ensure that the error is rectified at the next appropriate legislative opportunity.

7. The Executive has admitted that the drafting of article 5 is defective and the Committee therefore reports it on that ground, drawing attention to the Executive's undertaking to amend in due course. The Committee also draws the attention of the lead Committee to the consideration that failure to comply with article 5 is a criminal offence and that the lead Committee may not wish this matter to be dealt with via administrative discretion for any considerable period of time.

Question 2

8. The introduction to article 14 refers only to article 12 but paragraph (d) of that article refers to articles 12 and 13. The Executive was asked to explain the discrepancy.

9. The Executive is of the view that the provisions of the principal Order only need apply to a notice issued under article 12, as under article 13(1) the requirement is only to give a reasonable period of notice rather than a notice being issued as is the case under article 12. The reference to article 13 in article 14(d) of the Order is therefore unnecessary. While the Executive regrets this error the Executive is of the view that the error will cause no real confusion to those using the legislation as the introduction to article 14 makes it clear that the specified provisions of the principal Order only apply to a notice issued under article 12.

10. The Committee notes that in terms of the introduction to article 14, a number of provisions of the Plant Health Order 1993 are applied to notices issued under article 12. Among these provisions is article 28 which qualifies certain rights of entry conferred by other provisions of the 1993 Order as they are to apply to private dwelling houses. It does not refer to notices. Article 12 of the present Order does not confer powers of entry although it does authorise inspectors to issue notices requiring persons to take certain actions in relation to specified material. It would therefore seem that in so far as article 14 refers to article 12 in relation to article 28 of the 1993 Order its effect is doubtful.

11. It would seem that in so far as article 14(d) has any effect it must relate to article 13 rather than article 12. Although article 13 does not refer to a

notice it does confer a power of entry and therefore article 28 of the 1993 Order is relevant to that article rather than article 12.

12. If any provision is needed it is suggested that article 14(d) should form a free-standing provision applying article 28 of the 1993 Order to powers of entry under article 13. It may be that the reference to article 28 in article 13(2) of this Order would be sufficient though the Committee believes that a more specific incorporation of its terms would be necessary, in particular given the wording of article 28. Absence of such a provision also calls into doubt the effect of the reference to article 28 in article 13(2).

13. The Committee therefore draws the attention of the lead Committee and the Parliament to these provisions on the grounds of defective drafting, as acknowledged by the Executive.

Appendix 1

THE PLANT HEALTH (*PHYTOPHTHORA RAMORUM*) (SCOTLAND) ORDER 2004, (SSI 2004/488)

The Subordinate Legislation Committee considered the above instrument on 16 November 2004 and seeks an explanation of the following matters.

“Article 5(1)(page 3) provides that the material covered by that article must meet the requirements and effect of the provision. The Committee notes that the English Order does not contain an equivalent requirement.

The introduction to article 14 (page 7) refers only to article 12 but paragraph (d)

The Scottish Executive responds as follows:-

First Question

The words “and meets the requirements of Schedule 2” have been erroneously included in article 5(1). The Executive is grateful to the Committee for bringing this issue to the attention of the Executive.

In practice this error will have very little practical effect due to the fact that very little (if any) susceptible material originating in the USA or another third country is imported into Scotland. The majority (if not all) of susceptible material imported into Scotland comes from England and the Netherlands and is grown from plants originating in those countries and as a result does not fall within the remit of article 5 of the Order.

In addition guidance will be issued to the industry as a matter of urgency which makes it clear that susceptible material originating in the USA or a third country which is imported into Scotland and subsequently moved within the Community only requires to be accompanied by a plant passport. Plant health inspectors who have powers to enforce the Order are aware that only a plant passport is required when such material is imported into Scotland and then moved within the Community. The Order will be enforced in accordance with the provisions of Community law and there is therefore no question that any person importing material covered by article 5 of the Order will be required to ensure that the material meets the requirements of schedule 2.

*Decision 2002/757 which is implemented in the Order requires to be reviewed by 31 December 2004 (see Article 8 of the Decision). It may be that as a result of that review further changes will be made to the EU measures on *Phytophthora ramorum* in the near future which will require to be implemented by the Scottish Ministers as regards Scotland.*

Due to the fact that a review will be undertaken in December, the fact that the amount of material covered by article 5 which is actually imported into Scotland is negligible, the fact that plant health inspectors enforcing the

legislation are aware of the correct requirement and that they will enforce only on that basis and the fact that the industry will shortly receive guidance which will clarify that the material caught by article 5 only requires to be accompanied by a plant passport, the Executive is of the view that no difficulties in practice will be caused by the error in the article and that no person will be prejudiced by it; and so it is not necessary to bring forward an amending instrument as a matter of urgency. The Executive will, however, ensure that the error is rectified at the next appropriate legislative opportunity.

Second Question

The Executive is again grateful to the Committee for bringing this error to the attention of the Executive. The Executive is of the view that the provisions of the principal Order only need apply to a notice issued under article 12 as under article 13 (1) the requirement is only to give a reasonable period of notice rather than a notice being issued as is the case under article 12. The reference to article 13 in article 14(d) of the Order is therefore otiose. While the Executive regrets this error the Executive is of the view that the error will cause no real confusion to those using the legislation as the introduction to article 14 makes it clear that the specified provisions of the principal Order only apply to a notice issued under article

SSI Title and No:	The Sea Fish (Marketing Standards) (Scotland) Regulations 2004 (SSI 2004/498)						
Laid Date:	22 nd November 2004	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Wendy Geary, SEERAD, ext. 46444						
Standing Order:	10.4 Subject to negative procedure within 40 days						
RECOMMENDATION							
Lead Committee:	Environment & Rural Development	Other Committees:					
Clerk Contact Room & No:	Mark Brough 85240	Clerk Contact No:					
Reason:	These Regulations make provision for the enforcement in Scotland of Community Regulations laying down common marketing standards and related rules as to marketing for certain species of sea fish, including shellfish. The regulations implement a Community obligation to take appropriate measures to penalise infringements of Community Marketing rules for fishery products, imposed by Article 3 of Council Regulation (EC) No. 104/2000.						
Time Limit for Parliament to Deal with Instrument	12 th January 2005	1st SLC Meeting	30 th 2004	November			
		SLC reporting deadline	12 th 2004	December			
Lead Committee To Report By:	20 th December 2004	*Other Committees To Report to the Lead Committee:					
SSI Attached	X	Draft Motion Attached if Required		Date Motion and Designation Form E-Mailed to the Bureau		Laying Clerk Advised of Designated Lead Committee	

* 10 days before the lead committee reporting date. "Other" committees may wish to negotiate timing of their report with the lead committee.

SSI Title and No:	The Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995, (SE/2004/257)						
Laid Date:	15 th November 2004	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Sam Anwar, SEPA Sponsorship of Waste Division						
Standing Order:	Subject to negative procedure within 40 days						
RECOMMENDATION							
Lead Committee:	Environment & Rural Development	Other Committees:					
Clerk Contact Room & No:	Mark Brough 85240	Clerk Contact No:					
Reason:	This document provides guidance to the Scottish Environmental Protection Agency on the contribution it should make towards attaining the objective of achieving sustainable development by performance of its functions as the environmental regulator, whilst having regard to its responsibilities and resources.						
Time Limit for Parliament to Deal with Instrument	24 th December 2004	1st SLC Meeting	23 rd November 2004		SLC reporting deadline	5 th December 2004	
Lead Committee To Report By:	20 th December 2004	*Other Committees To Report to the Lead Committee:					
SSI Attached	X	Draft Motion Attached if Required		Date Motion and Designation Form E-Mailed to the Bureau		Laying Clerk Advised of Designated Lead Committee	

* 10 days before the lead committee reporting date. "Other" committees may wish to negotiate timing of their report with the lead committee.

Subordinate Legislation Committee

Extract of 42nd Report, 2004

The Committee reports to the Parliament as follows—

1. At its meeting on 30th November 2004 the Committee determined that it did not need to draw the attention of 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	the Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995, (SE/2004/257)
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Draft Guidance subject to annulment

The Scottish Environment Protection Agency (SEPA) and Sustainable Development, Statutory Guidance to SEPA made under Section 31 of the Environment Act 1995, **(SE/2004/257)**

1. Although the Committee did not identify points on the Guidance itself, it wished to highlight an issue with its enabling Act. The Guidance's enabling Act, the Environment Act 1995, provides that the Guidance is to be laid in draft before the Parliament. If within the period of 40 days after laying the Parliament resolves that it should not be made, the Scottish Ministers cannot make the Guidance. It is in relation to this provision that the Committee makes comment.
2. With regard to the calculation of the 40 day period, section 31(7) of the 1995 Act as amended by the Scotland Act 1998 (Consequential Modifications) (No.2) Order 1999, (SI 1999/1820) Schedule 2 Part 1 paragraph 120(2) makes provision that "no account shall be taken of any time during which [the Scottish Parliament] is dissolved or prorogued or...adjourned for more than four days." The Committee notes that the procedures of the Scottish Parliament do not make provision for adjournment or prorogation but that there is provision for recesses.
3. In the particular case of this Guidance, the 40 day period will expire before the start of recess and the Parliament will have the full period for scrutiny. However, the Committee was concerned that in other instances the effect of the provision might be that days of recess would count towards the 40 day period, essentially curtailing the period for Parliamentary scrutiny. The Executive has indicated to the Committee that it plans to undertake a review of statute to identify other instances where drafting does not reflect the

procedures of the Parliament. The Committee intends to ask the Executive for updates on the progress of this review.

4. The Committee reports this issue to the lead Committee and Parliament for information and does not raise an issue in respect of the Guidance itself.

**SUMMARY OF MAIN AGENDA ITEMS AFFECTING SCOTTISH INTERESTS
AGRICULTURE AND FISHERIES COUNCIL
21-22 DECEMBER 2004**

Note from the Scottish Executive

NB – The agenda for this Council is not yet available. The following has been prepared on the basis of what we consider might feature on the agenda.

Fisheries

Proposal for a Council Regulation fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (TACs and Quotas)

- *Adoption*

The Scottish Executive will be negotiating for a fair and equitable settlement which balances the need for stock conservation against the requirements of fishing communities.

Proposal for a Council Regulation fixing for 2005 the fishing opportunities and associated conditions for Deep Sea Stocks applicable in Community waters and, for Community vessels, in waters where catch limitations are required (TACs and Quotas)

- *Adoption*

The scientific advice for Deep Sea Stocks is severe and recommends substantial cuts in TACs, advice we expect the Commission to follow and which we will support.

Council Regulation establishing measures for the recovery of cod stocks

- *Adoption*

The Executive will be aiming for a balanced package – one which is more effective and more equitable than the current Annex V arrangements.

Proposal for a Council Regulation fixing for the fishing year 2005 the guide prices and Community producer prices for certain fishery products pursuant to Regulation (EC) No 104/2000

- *Political agreement/Adoption*

We have consulted with the industry on this proposal and we will support it.

Agriculture

Possible policy debate on proposals for a new Rural Development Regulation.

This issue was discussed briefly at the November Council and could re-appear in December depending on progress made in SCA. This is a very important dossier for Scotland. The Commission proposals were published on Wednesday 15 July. They are based on the three major objectives of:

*improving the competitiveness of farming through support for restructuring;
enhancing the environment through support for land management; and
improving the quality of rural life and promoting diversification.*

These objectives are broadly similar to the aims of the current regulation but would be delivered through a simplified single funding and programming instrument. While this approach can, on the face of it, be welcomed there is also a risk that support for less favoured areas may be subject to additional constraints which would be unwelcome in Scotland. The November Council noted general support for the rural development proposal but concerns were expressed on a number of issues including minimum spend, axis structure, less favoured area designation and provisions for non-Euro countries.