



**Environment and Rural Development Committee**

**1st Meeting, 2005**

**Wednesday 12 January 2005**

The Committee will meet at 10.30 am in Committee Room 1.

1. **Inquiry into rural development (in private):** The Committee will consider a draft programme for this inquiry.

*Not before 11.30am*

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

the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004/518); and

the Environmental Information (Scotland) Regulations 2004 (SSI 2004/520)

and will take evidence from Ross Finnie MSP (Minister for Environment and Rural Development).

3. **Subordinate legislation:** Ross Finnie MSP (Minister for Environment and Rural Development) to move S2M-2197—That the Environment and Rural Development Committee recommends that the draft Waste (Scotland) Regulations 2005 be approved.

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

the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 (SSI 2004/516); and

the Salmonella in Laying Flocks (Sampling Powers) (Scotland) Regulations 2004 (SSI 2004/536).

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

The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>Paper from the Convener (<i>for Members only</i>)</p>	<p>ERD/S2/05/1/1a</p>
<p><u>Agenda Item 2</u></p> <p><a href="#">the Common Agricultural Policy Schemes (Cross-Compliance) (Scotland) Regulations 2004 (SSI 2004/518)</a></p> <p><a href="#">the Environmental Information (Scotland) Regulations 2004 (SSI 2004/520)</a></p> <p>Extract from the Subordinate Legislation Committee's 46th Report</p>	<p>ERD/S2/05/1/2a</p> <p>ERD/S2/05/1/2b</p> <p><a href="#">ERD/S2/05/1/2c</a></p>
<p><u>Agenda Item 3</u></p> <p>the Waste (Scotland) Regulations 2005, (draft)</p>	<p>ERD/S2/05/1/3a</p>
<p><u>Agenda Item 4</u></p> <p><a href="#">the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 (SSI 2004/516)</a></p> <p>Letter from the Minister for Environment and Rural Development providing further information on the above regulations.</p> <p><a href="#">the Salmonella in Laying Flocks (Sampling Powers) (Scotland) Regulations 2004 (SSI 2004/536)</a></p> <p>Extract from the Subordinate Legislation Committee's 46th Report.</p>	<p>ERD/S2/05/1/4a</p> <p><a href="#">ERD/S2/05/1/4b</a></p> <p>ERD/S2/05/1/4c</p> <p><a href="#">ERD/S2/05/1/4d</a></p>

## Subordinate Legislation Committee

### Extract of 46th Report, 2004

The Committee reports to the Parliament as follows—

1. At its meeting on 21<sup>st</sup> December 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 Development	and	Rural	SSI 2004/520
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#### **Instruments subject to annulment**

The Environmental Information (Scotland) Regulations 2004,  
(SSI 2004/520)

3. The Committee noted that these Regulations were made under section 2(2) of the European Communities Act 1972, which allows Ministers discretion as to the Parliamentary procedure for such instruments. While these Regulations are subject to negative procedure, the equivalent UK regulations are subject to approval in both Houses of Parliament. The Committee asked the Executive for clarification as to why it had chosen to make these Regulations subject to negative resolution.
4. The Executive replied that it considered negative procedure to be appropriate given the form and content of the instrument. Further explanation was also provided to clarify why the decision was made to use section 2(2) to make this instrument rather than powers under the Freedom of Information (Scotland) Act 2002. It was also pointed out that the difference in procedures would be the same had each administration used powers under respective Freedom of Information legislation to make the Regulations.
5. The Committee remains of the view that it would be preferable for Regulations such as these to be subject to the more detailed scrutiny afforded by affirmative procedure. However, given that the provisions in these Regulations are due to come into force on 1<sup>st</sup> January 2005, in line with other Freedom of Information legislation, the Committee was of the opinion that it could be problematic to ask for these Regulations to be revoked and re-laid. Therefore, the Committee agreed that negative procedure would be sufficient in this instance and draws the attention of the lead Committee and Parliament to the Executive's response (attached at appendix 2).

## **APPENDIX 2**

### **THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004, (SSI 2004/520)**

In its letter of 14 December 2004 to Catherine Hodgson the Committee commented as follows:

“The Committee notes that the equivalent UK Regulations were laid in draft for approval by each House of Parliament whereas these regulations have been made under negative procedure. The Committee asks the Executive why it chose negative procedure for these regulations.”

#### **The Scottish Executive Environment and Rural Affairs Department responds as follows:**

These Regulations are made under section 2(2) of the European Communities Act 1972. In accordance with paragraph 2(2) of Schedule 2 to that Act such an instrument may be subject to either affirmative or negative procedure before the Parliament. The Department considered, in light of that and given the form and content of these Regulations, that negative procedure was appropriate.

Consideration had been given at an early stage, in each administration, to the use of powers under the Freedom of Information (Scotland) Act 2002 and the Freedom of Information Act 2000 to make the regulations relating to the matters covered by the Directive (sections 62 of the 2002 Act and 74 of the 2000 Act refer).

It was decided, however, that it would be necessary to employ section 2(2) of the European Communities Act 1972 in order to completely transpose the Directive.

The Parliamentary procedure in the Freedom of Information Act 2000 would have required affirmative procedure for the making of the transposing regulations but equivalent provisions in the Freedom of Information (Scotland) Act 2002 require negative procedure. It may be that this difference accounts for the approach adopted by the United Kingdom government.



# SCOTTISH EXECUTIVE

**Agenda Item 4**

**Environment and Rural  
Development Committee**

12 January 2005  
ERD/S2/05/1/4b

Minister for Environment & Rural Development  
**Ross Finnie MSP**

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Our ref:

December 2004

Thank you for your letter of 21 December seeking clarification on several points raised during the Committee's consideration of the Water Environment (Register of Protected Areas) (Scotland) Regulations 2004 (SSI 2004/516) on 15 December.

Firstly let me deal with the specific points regarding the inclusion of coastal waters and wetlands in this instrument. I can inform the Committee that coastal waters are covered by the definition of 'surface waters' and are therefore covered by this instrument; and that paragraph 3 of the Schedule ensures any wetlands included in designations under the Habitats and Birds Directive are included in the Register. However, I thank the Committee for drawing this point to our attention, and will consider whether it would be appropriate to amend the Regulations to add a provision to Part II of the Schedule which would allow the Register to identify specifically wetlands comprising or within a protected area.

On your subsequent points seeking clarification about various matters, SEPA had been made aware of the forthcoming requirement to produce this Register and had already undertaken the preparatory work prior to 22 December. As of that date SEPA have made the Register available on their website. The Regulations do not require additional designations, nor environmental improvements, to be made, but rather require SEPA to collate information on designations already made by Ministers; thus the resources required to implement the Regulations are minimal.

On the wider issues relating to the Water Environment and Water Services (Scotland) Act 2003 (WEWS), I would propose that an informal briefing by my officials may provide the best opportunity for the Committee to discuss wider WFD issues generally. Information on the progress that has taken place on implementing WEWS during 2004 will in due course be presented in the Executive's second report to Parliament. However, as the report will not be produced until the end of March, an informal briefing in January may be of interest to the Committee.

**ROSS FINNIE**

## Subordinate Legislation Committee

### Extract of 46th Report, 2004

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1. At its meeting on 21<sup>st</sup> December 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 Development	and	Rural	SSI 2004/536
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#### **Instruments subject to annulment**

The Salmonella in Laying Flocks (Sampling Powers) (Scotland)  
Regulations 2004, **(SSI 2004/536)**

3. The Committee asked the Executive to explain the purpose of paragraph (2) of regulation 6 and in particular what offence would be covered by that paragraph that does not already fall under paragraph (1) of that regulation.
4. The Executive agrees that paragraph (2) of regulation 6 is unnecessary as paragraph (1) of that regulation covers all offences which would be committed under the instrument. However, the Executive explained that it does not propose to amend the Regulations as the survey in relation to which the sampling powers are required is due to be completed in October 2005 and it is not anticipated that the powers in the instrument will be exercised after that date.
5. The Committee therefore draws the attention of the lead Committee and Parliament to the Regulations on the ground of defective drafting, as acknowledged by the Executive. The Committee also accepts that no amendment to these Regulations be brought forward, given the completion date for the survey as discussed above.

## **APPENDIX 5**

### **THE SALMONELLA IN LAYING FLOCKS (SAMPLING POWERS) (SCOTLAND) REGULATIONS 2004, (SSI 2004/536)**

On 14<sup>th</sup> December 2004 the Subordinate Legislation Committee considered the above instrument and sought an explanation of the following matter:-

The Committee asked the Executive to explain the purpose of paragraph (2) of regulation 6 and in particular what offence would be covered by that paragraph that does not already fall under paragraph (1) of that regulation.

#### **The Scottish Executive responds as follows:-**

The Executive would like to thank the Committee for drawing this matter to it's attention. It is accepted that paragraph (2) of regulation 6 is not necessary. Paragraph (1) of that regulation covers all offences which would be committed under the instrument.

The Executive does not propose to amend the instrument. The survey, in relation to which the sampling powers in the instrument are required, is due to be completed by the end of October 2005. Accordingly, it is not anticipated that the powers in the instrument will be exercised after that date. If the circumstances alter then the Executive