



Environment and Rural Development Committee

8th Meeting, 2005

Wednesday 9 March 2005

The Committee will meet at 10.30 am in Committee Room 4

1. **Item in private:** The Committee will consider whether to take item 4 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 (SSI 2005/63);
 - the Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005 (SSI 2005/64);
 - the Possession of Pesticides (Scotland) Order 2005 (SSI 2005/66);
 - the Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2005 (SSI 2005/67);
 - the Potatoes Originating in the Netherlands (Notification) (Scotland) Order 2005 (SSI 2005/73); and
 - the Potatoes Originating in the Netherlands (Scotland) Revocation Regulations 2005 (SSI 2005/74).
3. **Work programme:** The Committee will consider its forward work programme.
4. **Environmental Assessment (Scotland) Bill:** The Committee will consider its approach to the Bill at Stage 1 should it be designated as lead committee.
5. **Inquiry into climate change (in private):** The Committee will consider a draft report on its inquiry into climate change.

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Clerk to the Committee
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The following papers are attached:

<u>Agenda Item 2</u>	
<u>The Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 (SSI 2005/63)</u>	ERD/S2/05/8/2a(i)
<u>Prevention of Environmental Pollution from Agricultural Activity</u>	ERD/S2/05/8/2a(ii)
The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005 (SSI 2005/64)	ERD/S2/05/8/2b
<u>The Possession of Pesticides (Scotland) Order 2005 (SSI 2005/66)</u>	ERD/S2/05/8/2c
<u>The Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2005 (SSI 2005/67)</u>	ERD/S2/05/8/2d
<u>The Potatoes Originating in the Netherlands (Notification) (Scotland) Order 2005 (SSI 2005/73)</u>	ERD/S2/05/8/2e
<u>The Potatoes Originating in the Netherlands (Scotland) Revocation Regulations 2005 (SSI 2005/74)</u>	ERD/S2/05/8/2f
Note from the Subordinate Legislation Committee	<u>ERD/S2/05/8/2g</u>
Extract from the draft report of the Subordinate Legislation Committee (<i>for members only</i>)	ERD/S2/05/8/2h
<u>Agenda Item 3</u>	
Paper from the Convener (<i>for members only</i>)	ERD/S2/05/8/3a
<u>Agenda Item 4</u>	
Paper from the Clerk (<i>for members only</i>)	ERD/S2/05/8/4a
<u>Agenda Item 5</u>	
Draft report (<i>for members only</i>)	ERD/S2/05/8/5a

Agenda Item 2

**Environment and Rural
Development Committee**

9 March 2005
ERD/S2/05/8/2g

SUBORDINATE LEGISLATION COMMITTEE

7th Meeting, 2005 (Session 2)

Tuesday 1st March, 2005

Extract from SLC Correspondence & Executive Responses

- The Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2005, **(SSI 2005/64)**
- The Possession of Pesticides (Scotland) Order 2005, **(SSI 2005/66)**

THE LESS FAVOURED AREA SUPPORT SCHEME (SCOTLAND) AMENDMENT REGULATIONS 2005, (SSI 2005/64)

On 22nd February the Committee asked the Executive for an explanation of the following matters-

“In relation to regulation 15(a) the Committee asks the Executive to clarify that it is the Code of Good Agricultural Practice that is relevant for the purposes of Part 1 of Schedule 2, rather than the Order approving the Code.

Again with reference to regulation 15(a), the Committee asks whether it is the intention that only those parts of the Code that apply to water pollution are relevant.

The Committee also asks for clarification as to whether, in regulation 13 new regulation 24(4), it is the intention that the requirement to notify determinations by recorded delivery should apply in relation to the Scottish Ministers as well as to applicants.”

The Scottish Executive responds as follows:

First question

2. Regulation 15(a) inserts into Schedule 2 of the principal regulations the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005. This Order approves the Code of Good Practice for the Prevention of Environmental Pollution from Agricultural Activity. It is the Code which contains practical guidance to persons engaged in agriculture with respect to activities that may cause water pollution.

Second question

3. All of the Code of Good Practice for the Prevention of Environmental Pollution from Agricultural Activity which has been approved by the Water (Prevention of Pollution) (Code of Practice) (Scotland) Order 2005 is relevant. That is, all sections of the Code other than sections 3 and 13.

Third question

4. It is not the intention that the requirement to notify determinations by recorded delivery should apply in relation to the Scottish Ministers.

THE POSSESSION OF PESTICIDES (SCOTLAND) ORDER 2005, (SSI 2005/66)

The Subordinate Legislation Committee considered the above instrument on 22 February and sought an explanation of the following matters -

“The Executive is asked whether, in its view, the Order constitutes a new Technical Standard within the meaning of Directive 98/34/EC and, if so, to confirm that the Order has been notified to the Commission as required.

The Committee asks the Executive to confirm that the requirements of section 26(4) of the Wildlife and Countryside Act 1981 have been complied with.

The Committee would also be grateful for an explanation as to why a statement with regard to compliance with section 26(4) has not been included in the preamble to the Order.”.

The Scottish Executive responds as follows –

First Question

1.The Executive is of the view that the Order does not constitute a new technical standard within the meaning of Directive 98/34/EC.

2.The purpose of the Technical Standards Directive is to avoid the creation of new technical barriers to trade within the EC. The Order does not create any barrier to trade within the EC. The Order does not prevent the sale of existing pesticides or change the conditions of approval relating to pesticides. Lawful use of pesticides containing the prescribed ingredients, i.e. use in accordance with conditions of the approval relating to the product, is not affected by the Order.

Second Question

3.The Executive confirms that the requirements of section 26(4) of the Wildlife and Countryside Act 1981 have been complied with. A wide ranging consultation exercise was carried out and local authorities affected, other bodies with an interest and other persons with an interest were given the opportunity to submit objections or representations in accordance with section 26(4)(a). Scottish Natural Heritage was consulted in accordance with section 26(4)(b).

Third Question

4.The Executive accepts that the preamble should have recited the fulfilment of the statutory conditions which the enabling Act requires to be met before the instrument can be made. The Executive regrets this omission, however, as outlined above, section 26(4) has been complied with and the fact a statement to this effect has not been included in the preamble does not affect the validity of the Order.