



Environment and Rural Development Committee

9th Meeting, 2005

Wednesday 16 March 2005

The Committee will meet at 10.00 am in Committee Room 2

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

the Water Environment (Drinking Water Protected Areas) (Scotland) Order 2005, (SSI 2005/88);

the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005, (SSI 2005/90);

the Dairy Produce Quotas (Scotland) Regulations 2005, (SSI 2005/91);

the Pollution Prevention and Control (Scotland) Amendment Regulations 2005, (SSI 2005/101); and

the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2005, (SSI 2005/109).

2. **Item in private:** The Committee will consider whether to discuss options for proceeding with its inquiry into rural development in private at a future meeting.
3. **Inquiry into climate change (in private):** The Committee will consider a further draft report.

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

The following papers are attached:

<u>Agenda Item 1</u>	
<u>The Water Environment (Drinking Water Protected Areas) (Scotland) Order 2005, (SSI 2005/88)</u>	ERD/S2/05/9/1a
<u>The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2005, (SSI 2005/90)</u>	ERD/S2/05/9/1b
Correspondence between Subordinate Legislation Committee and the Scottish Executive	ERD/S2/05/9/1c
Extract from the draft report of the Subordinate Legislation Committee <i>(for members only) (to follow)</i>	ERD/S2/05/9/1d
<u>The Dairy Produce Quotas (Scotland) Regulations 2005, (SSI 2005/91)</u>	ERD/S2/05/9/1e
<u>The Pollution Prevention and Control (Scotland) Amendment Regulations 2005, (SSI 2005/101)</u>	ERD/S2/05/9/1f
The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2005, (SSI 2005/109)	ERD/S2/05/9/1g
<u>Agenda Item 3</u>	
Draft report <i>(for members only) (to follow)</i>	ERD/S2/05/9/3a

SUBORDINATE LEGISLATION COMMITTEE

8th Meeting, 2005 (Session 2)

Tuesday 8th March, 2005

Extract from SLC Correspondence & Executive Responses

THE SEA FISHING (RESTRICTION ON DAYS AT SEA)(SCOTLAND) ORDER 2005 (SSI 2005/90)

1. On 8th March the Subordinate Legislation Committee considered the above instrument and sought an explanation of the following matters -

“The Committee asks the Executive to explain the meaning of “designated port” in article 24(1)(b). The term “designated port” is not defined although article 11(4) refers to ports and landing locations designated for the purposes of Regulation 423/2004 as set out in the Schedule to the Order. However article 11 and the Schedule appear to relate only to cod whereas article 24 bears to apply both to cod and to sole.

The Committee asks the Executive to explain why the first paragraph of article 33 is not numbered.

The Committee asks the Executive whether given the revocation of SSI 2004/44 (as amended by SSI 2004/81) by regulation 35 it is intended that the amendments made to SSI 2000/7 by article 8 of SSI 2004/44 should be replaced in their entirety by the amendments made by article 25 of the present Order.”

The Scottish Executive responds as follows

First question

2. In article 24(1) “designated port” means any of the ports specified in the Schedule to the Order.

3. Article 12(1) of Regulation 423/2004 provides that where more than 2 tonnes of cod are landed from a Community vessel the landing is only to be made at a designated port. Article 12(2) of Regulation 423/2004 provides that each Member State shall designate ports into which any landing of cod in excess of 2 tonnes shall take place. Regulation 27/2004 also provides that the list of designated ports is to be transmitted to the Commission and the Commission is thereafter required to transmit this information to all Member States. Article 11(4) of the Order provides that the ports designated for the purpose of Article 12(2) of Regulation 423/2004 are the ports specified in the Schedule to the Order.

4. There is no equivalent requirement to Article 12(1) and (2) of Regulation 423/2004 in Annex IVc of Regulation 27/2005 for landings in excess of 2 tonnes of sole to be landed into a designated port. Notwithstanding that fact, article 24(1) of the Order provides that where cod or sole is landed in a designated port i.e. a port designated for the purposes of Article 12(2) of Regulation 423/2004 (being one of the ports listed in the Schedule to the Order), that the top copy of the logbook is handed over to a British sea-fishery officer or deposited in the box provided for that purpose.

5. The list of designated ports has been made available to fishermen and other organisations with an interest through the Guidance provided in relation to the Order. The Guidance contains a list of designated ports in an Annex to the Guidance to which fishermen are referred to. As a result it does not seem to the Executive that there is any real likelihood of confusion arising amongst fishermen as to what is meant by the term “designated port” in article 24(1) of the Order.

Second question

6. The failure to number the first paragraph of article 33 is an error. The Executive is of the view that this minor error will cause no difficulty to those who require to use the Order.

Third question

7. The intention of article 25 of the Order was that the definition of “Annex V” was substituted with a new definition of “Annex IVc”, that the definition of “the Council Regulation” was substituted with a new definition of “the Council Regulation” and that in the Schedule in column 3 of each entry opposite items 2(1), (m), (n) and (o) only the words “paragraph 13 of Annex XVII” were substituted with “Article 9 of Regulation 423/2004 and paragraph 13 of Annex IVc”.

8. The Executive accepts that given that SSI 2004/44 has been revoked by the Order there may be doubt as to whether the amendments inserted into column 3 of Schedule 1 to SSI 2000/7 (which are not substituted by the Order) remain in force. The Executive is of the view that it would have been preferable if the amendments made by SSI 2004/44 had been wholly replaced by article 25 of the Order or article 8(b) of SSI 2004/44 had not been revoked.

9. The Executive is however of the view that this issue does not have any effect on the provisions of SSI 2000/7. This is due to the fact that the words in question only appear in Column 3 of Schedule 1 to SSI 2000/7. Column 3 provides in relation to each Community control measure an indication of the subject matter of the measure. Article 2(4) of SSI 2000/7 provides that column 3 of the Schedule shall not be read as limiting the scope of any Community control measure and shall be disregarded in relation to any question arising as to the construction of SSI 2000/7.

10. The Executive will however take steps to put this issue beyond doubt at the next legislative opportunity. It is envisaged that both the Order and SSI 2000/7 will require to be amended in the near future as a result of further Community legislation.