



Environment and Rural Development Committee

13th Meeting, 2005

Wednesday 11 May 2005

The Committee will meet at 9.45 am in Committee Room 4

1. **Environmental Assessment (Scotland) Bill:** The Committee will take evidence at Stage 1 from—
 - Amanda Chisholm, Strategic Environmental Assessment Team Leader, Historic Scotland;
 - Dr Bill Band, National Strategy Manager, Scottish Natural Heritage; and
 - Neil Deasley, Principal Policy Officer, Scottish Environment Protection Agency.
2. **Annual report:** The Committee will consider its draft annual report for the parliamentary year 7 May 2004 to 6 May 2005.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - the Plant Health (Import Inspection Fees) (Scotland) Regulations 2005 (SSI 2005/216);
 - the Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (Scotland) Regulations 2005 (SSI 2005/218);
 - the Horse Passports (Scotland) Regulations 2005 (SSI 2005/223); and
 - the Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005 (SSI 2005/225).
4. **Inquiry into rural development (in private):** The Committee will consider options for proceeding with its inquiry.
5. **Inquiry into climate change (in private):** The Committee will consider a further draft report.

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The following papers are attached:

<u>Agenda Item 1</u>	
Briefing paper (<i>for members only</i>)	ERD/S2/05/13/1a
Submission from Historic Scotland	ERD/S2/05/13/1b
Submission from SNH	ERD/S2/05/13/1c
Submission from SEPA	ERD/S2/05/13/1d
<u>Agenda Item 2</u>	
Draft report (<i>for members only</i>)	ERD/S2/05/13/2a
<u>Agenda Item 3</u>	
Extract from the Subordinate Legislation Committee 16th Report	ERD/S2/05/13/3a
The Plant Health (Import Inspection Fees) (Scotland) Regulations 2005 (SSI 2005/216)	ERD/S2/05/13/3b
The Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (Scotland) Regulations 2005 (SSI 2005/218)	ERD/S2/05/13/3c
The Horse Passports (Scotland) Regulations 2005 (SSI 2005/223)	ERD/S2/05/13/3d
The Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005 (SSI 2005/225)	ERD/S2/05/13/3e
<u>Agenda Item 4</u>	
Paper from the Convener (<i>for members only</i>)	ERD/S2/05/13/4a
<u>Agenda Item 5</u>	
Draft report (<i>for members only</i>)	ERD/S2/05/13/5a

SUBMISSION FROM HISTORIC SCOTLAND

1. Historic Scotland is an Executive Agency of the Scottish Executive and part of the Scottish Executive Education Department (SEED). We are responsible for the administration of Scottish Ministers' functions and statutory powers in relation to the protection of Scotland's historic environment and for advising Ministers on policy. The Scottish Ministers have designated Historic Scotland to act as a SEA Consultation Authority on their behalf, on matters affecting the historic environment.

2. Historic Scotland welcomes the opportunity to provide evidence to the Environment and Rural Development Committee on the Environmental Assessment (Scotland) Bill. As the Committee will be aware, Historic Scotland responded to the two consultation papers which dealt with the Bill (2003/31 and 2004/12). The evidence submitted here relates to the key questions asked by the Committee and we will be happy to answer more detailed questions when we come to give oral evidence. Our comments here are from the perspective of a Consultation Authority; as a Responsible Authority we will follow the requirements for SEA set out in the Bill.

Provisions of the Bill which have been changed

3. Historic Scotland welcomes the inclusion of "strategies" in the definition of plans and programmes, in line with the commitment set out in the Programme for Government. We also welcome the clarified wording in the Bill, including the identification of Responsible Authorities.

What will the effect be of extending the scope of SEA to a broader range of plans and programmes than is applicable to the rest of the UK?

4. The Consultation Authorities have been undertaking a significant amount of informal consultation and discussion with a variety of Responsible Authorities since the SEA Regulations came into effect in July 2004. A point which has been made several times is that the strategic context for their activities is often set by Scottish Executive policy and/or strategic frameworks. However, one of the concerns of the Responsible Authorities is that this strategic-level policy is not subject to SEA. Extending the scope of SEA in the way proposed by the Bill will address this matter and ensure that SEA is applied consistently and fairly to the hierarchy of plans, programmes and strategies taken forward by all levels of government.

5. It is inevitable that extending the scope of SEA in this way will require additional resources from all the stakeholders involved. Historic Scotland has raised this matter in its consultation responses, as have many of the potential Responsible Authorities and others. The Consultation Authorities have been working closely with the Scottish Executive and others to increase understanding and awareness of SEA and to assist the Responsible Authorities in building capacity in this area.

What will the effect be of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?

6. It is important that the focus of SEA be on those plans, programmes and strategies which may give rise to significant environmental effects. Historic Scotland therefore supports the use of pre-screening as a means of sifting out those which would be unlikely to result in adverse environmental effects. However (as noted in our consultation response) early indications are that guidance is needed on pre-screening, to assist Responsible Authorities in undertaking the process and to ensure that it is applied consistently across the public sector. We understand that guidance will be prepared by the Scottish Executive Gateway in conjunction with the Consultation Authorities and others.

7. We consider that a reporting mechanism for pre-screening results would be useful, both as a means of monitoring the SEA process and as a way of sharing information. We therefore support calls made by others for a register (such as that used by the Canadian Environmental Assessment Agency) which, amongst other things, would record pre-screening results.

8. As noted in our consultation response, we support the proposed approach of screening on a case-by-case basis. There have been calls from the Responsible Authorities to provide an indicative list of plans, programmes and strategies to be subject to SEA; however, this would best be prepared once sufficient experience of the process has been gained by all the stakeholders. While considerable effort has been expended by the Executive and others to identify the potential plans, programmes and strategies, it is only the Responsible Authorities who have the necessary and sufficient knowledge of their activities.

Is the provision of a SEA Gateway within the Scottish Executive a sufficient method of managing the SEA process?

9. The SEA Gateway is important in that it provides a central known point of contact for Responsible Authorities and Consultation Authorities, and facilitates efficient and effective communication between the two. This is particularly crucial in light of the deadlines by which the Consultation Authorities must respond to screening and scoping requests.

10. The Scottish Executive, in recognition of consultation comments received, proposes to proceed with a gateway located in the Scottish Executive, which will take forward administrative and management functions, as well as some specialist functions. To a certain extent this is already occurring. The Consultation Authorities are being asked for specialist advice on SEA as much as, if not more than, on our specialist areas of environmental expertise. Indeed, a significant amount of time has been spent on informal consultations, awareness-raising and training sessions, and review of draft screening and scoping reports and discussions of these with the relevant Responsible Authorities. We are also working closely with the SE Gateway in the preparation of the templates and Bill guidance, and expect to be involved in the case studies to be taken forward between the Executive and COSLA.

SUBMISSION FROM SCOTTISH NATURAL HERITAGE

Thank you for the opportunity to provide evidence to the Environment and Rural Development Committee on the general principles of the Environmental Assessment (Scotland) Bill.

As one of the three specified Consultation Authorities SNH welcomes the Environmental Assessment (Scotland) Bill, which will extend strategic environmental assessment to all new strategies, programmes and plans developed by public sector organisations. SNH considers that the implementation of SEA will, through a more rigorous and transparent policy planning process, help to place environmental considerations at the heart of decision-making and thus to make future development more sustainable. We shall do our best to ensure that these benefits are achieved with the minimum of bureaucracy and delay.

Our comments on the specific questions raised by the consultation paper are contained in the Annex to this letter. In summary SNH welcomes the proposed Bill; the main points that we wish to make can be summarised thus:

- SNH supports the comprehensive approach to the application of SEA being adopted for Scotland by the Scottish Executive. We believe that this will in the long run reduce the friction between environmental and other objectives by encouraging their integration at an earlier stage in the planning process. In this respect we believe that Scotland will be giving a lead that we would hope and expect the rest of the UK to follow. We recognise, however, that guidance will be necessary, particularly to make clear the relationship between the Scottish and UK regimes for UK-based Responsible Authorities;
- SNH supports measures for pre-screening and screening but considers that their application will need to be supported by guidance and monitoring and incorporate a review mechanism; and
- SNH supports a strong central administration of SEA with wide-ranging duties of advice, co-ordination and monitoring and information, closely supported by the Consultation Authorities in offering advice on environmental impacts.

I confirm that SNH will be pleased to provide oral evidence to the Environment and Rural Affairs Committee at its meeting on Wednesday 11 May and that we may submit a further written submission by 4 May 2005, as invited in your letter of 19 March 2005.

Annex 1

Response by Scottish Natural Heritage to the consultation by the Environment and Rural Affairs Committee on the Environmental Assessment (Scotland) Bill.

1. SNH's detailed responses to the questions raised in the consultation paper are given below.

What will be the effects of extending the implementation of strategic environmental assessment to cover a broader range of plans and programmes than is applicable to the rest of the UK?

2. SNH strongly supports the Scottish Executive's aim of making Scotland a '*world leader*' in the application of strategic environmental assessment. We accept that diverging approaches to environmental assessment reflect differing devolved approaches to the achievement of sustainable development as set out in '*One future – different paths. The UK's shared framework for sustainable development*'. We consider that the proposed approach in Scotland, which extends assessment to higher tiers of policy development and maintains a strong focus on 'environmental' assessment, will provide a focused, robust and consistent approach.
3. The proposed Scottish approach will help to place the environment at the heart of decision-making. At a time when environmental threats such as climate change are increasingly prominent and when there is growing recognition of environmental quality as a key component of "place competitiveness", this should pay real dividends, especially in the medium to long term.
4. Some people have argued that SEA is too narrow in focus and that instead of applying it widely the aim should be to move straight to a regime of Sustainability Appraisal (SA). This is the approach currently being explored south of the Border. SNH regards this criticism as mistaken. It sees a comprehensive system of SEA as a sensible, and indeed necessary, stepping-stone to a fully-fledged regime of SA. SEA itself is a relatively immature technique; SA is even more in its infancy. This is reflected in the current lack of consensus over a suitable methodology for conducting it. The over-simplification that is currently a feature of SA creates a risk that environmental considerations are skated over and given inadequate weight in the overall assessment. This would do a grave disservice to the cause of sustainable development.
5. In our response to earlier consultations on SEA, we indicated our support for SEA as the best means at present to properly integrate environmental considerations into policy making. We believe that SEA will make a substantial contribution to the integrated decision-making essential to sustainable development by highlighting the environmental implications of proposals. Its potential in this respect could be further realised if the legislation placed decision-makers who chose to disregard any significant adverse environmental effects under an explicit obligation to specify clearly, in setting out the reasons for choosing the plan or programme as adopted (S18(3)(e)), the nature and extent of any social or economic goals that had led them to do so..
6. The Consultation Authorities will have a dual role in responding to screening and scoping requests under the UK Regulations and the Environmental Assessment (Scotland) Act. We anticipate that further guidance and clarification of our roles and responsibilities will be necessary and intend to make this available via our website. Guidance on the different regimes will also

be required, particularly for private companies operating on a UK wide basis and carrying out public functions under the control or direction of the Government.

What will be the effect of the proposed system of administrative arrangements chosen to implement this obligation e.g. pre-screening and screening?

7. SNH accepts the principle of pre-screening as a means to reduce the potential burden on responsible authorities. At the same time, we would be very concerned if the pre-screening mechanism was systematically misused. We therefore suggest that the use of the pre-screening mechanism should be carefully monitored and a commitment given to reviewing the process, assessing implementation and identifying improvements if the system does not seem to be working in practice. SNH considers that Responsible Authorities should be required to report on pre-screening exercises. There may also be a case for providing Scottish Ministers with a power to call in cases for screening and to remove pre-screening powers if a Responsible Authority was using them routinely to avoid its obligations on SEA.
8. A further safeguard should be provided through the preparation and active dissemination of guidance prepared by the Scottish Executive and the Consultation Authorities. SNH suggests that the application of pre-screening should be supported by guidance on a comprehensive and systematic approach to the application of criteria in determining potential environmental effects, whether of a 'significant', 'minimal', 'positive', or 'negative' effect etc. This should ensure that significance implies a degree of importance in relation to the impact on the environment. There may also be some merit in giving guidance on the types of strategies, plans and programmes that could be subject to the proposed pre-screening procedures.
9. SNH supports the aim of achieving a simple, streamlined and effective system for SEA in Scotland. We agree that the current system should be reviewed at regular intervals, and that further streamlining should be possible through the provision of readily accessible sources of baseline data and monitoring indicators; advice on effective methodological tools for implementation; and the harmonising of stages of SEA with stages in policy planning procedures. We also agree that areas of overlap and duplication should be identified and addressed through joint procedures wherever possible.

Is the provision of a Strategic Environmental Assessment (SEA) Gateway within the Executive a sufficient method of managing the SEA process?

10. SNH's experience in the implementation of the SEA Regulations leads us to conclude that the existence of the SEA Gateway is a vital component in ensuring a visible focus and a supportive and effective system for administering SEA in Scotland. In addition it needs to be supported by strong working relations with the Consultation Authorities. Formal status might be considered for the Scottish Liaison Group, through which representatives from the Consultation Authorities meet the Scottish Executive to share experience. This

might provide central access to sources of information, advice and guidance on best practice, perhaps via a dedicated website.

11. Such a central source of information would allow for comprehensive guidance on SEA across all levels of government, and allow scope for consultation with other organisations where such wider engagement may be necessary e.g. in the field of health where the competence of the currently identified Consultation Authorities is limited. A Gateway also provides a one-stop shop approach for Responsible Authorities and confirms the Scottish Executive's commitment and leadership in this area.
12. SNH considers that, by contrast, any proposal for the creation of a freestanding administrative body would give rise to considerably greater costs. In addition, the establishment of such a body could detract from joint working between Responsible Authorities and the Consultation Authorities. This could have negative implications for the SEA process. It would remove responsibility for involvement in SEA from those directly involved in guiding the policy process, and could hamper the integration of SEA into policy planning and hinder the development of in-house expertise and organisational capacity building within the Consultation Authorities.
13. For SEA to be effectively implemented it will need to permeate working practices across organisations and will involve staff at all levels, including operational personnel as well as those with a policy perspective. There is some danger that the creation of a specialist agency would work against the full integration of SEA into everyday public sector practice.

SUBMISSION FROM SEPA

1. Background

- 1.1 Thank you for the invitation to SEPA to submit both written and oral evidence to the Committee in respect of the Environmental Assessment (Scotland) Bill
- 1.2 SEPA welcomes the Bill and the principle that it establishes to require strategic environmental assessment (SEA) for all public plans, programmes and strategies where they may have significant environmental effects. In particular, SEPA welcomes the very positive ambition expressed by Ministers to exceed minimum compliance with the SEA Directive and to make Scotland a world leader in this field. SEPA considers that the Bill is a major step in achieving this ambition.
- 1.3 Under the existing Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004, (*the SEA Regulations*) SEPA is identified as a Consultation Authority, which gave the Agency new statutory duties to provide its view at key stages in the SEA process. The Bill also identifies SEPA as a Consultation Authority and confers similar statutory duties. SEPA is also a Consultation Body for UK wide plans under the UK SEA Regulations. In addition to these Consultation Authority duties, SEPA will also require to act as a Responsible Authority when undertaking SEA for its own plans, programmes and strategies that fall within the scope of the Bill.
- 1.4 This submission gives views upon:
 - The effect of widening the scope of SEA;
 - The role of the SEA Gateway;
 - Pre-Screening;
 - SEA and Sustainable Development;
 - Resources;
 - Schedule 3(6)(a); and
 - Screening

2. ***The effects of extending SEA to cover a broader range of plans and programmes than is applicable to the rest of the UK***

- 2.1 SEPA considers that the effects of the Bill in extending the scope of SEA in Scotland to cover a broader range of plans, programmes and strategies will be extremely positive. The purpose and spirit of the original EC Directive was to ensure that environmental effects are considered in decision making at the earliest possible stage in the process and the Bill continues this aim by applying this purpose to a wider range of Scottish plans.
- 2.2 SEPA believes that the approach being adopted will result in:
 - more informed decision making in respect of the environmental effects of plans, programmes and strategies;
 - robust, consistent and integrated consideration of environmental effects throughout the process of plan-making;
 - more transparency and greater involvement of the public and other stakeholders in plan-making;
 - the environmental aspects of sustainable development being fully explored, and, ultimately
 - more environmentally positive plans that will make a real contribution to achieving the goal of sustainable development.

2.3 As noted above, SEPA is a Consultation Authority under the existing Regulations, the proposed Bill and the UK Regulations. There are already differences in SEPA's consultation authority responsibilities under the two Regulations, and these may be exacerbated by the Bill. This does create potential for confusion, however this should be able to be addressed effectively through guidance. The Executive has committed to prepare guidance to accompany the Bill when it is enacted and the Scottish Consultation Authorities are already working on a joint service statement/guidance – both of these initiatives will address these issues.

3. Role of the SEA Gateway

3.1 SEPA strongly supports the SEA Gateway. Practical experience with the SEA Regulations since July 2004 has proven that the SEA Gateway is an extremely valuable mechanism for effective consultation. In association with the similar, but simpler gateways set up within each of the Consultation Authorities, this approach has proven to allow consultation documents to be circulated quickly and efficiently, while Responsible Authorities are provided with a single point of contact.

3.2 In its response to the draft Bill, SEPA suggested that there were a wider range of activities, each designed to make the process more efficient and more effective, which could, we considered at that time, be undertaken by some sort of separate SEA body. Experience with SEA to date has convinced us that a separate body is probably unnecessary and might actually hinder the need for Responsible Authorities to integrate SEA fully into their plan-making systems. However, we feel that these tasks are important to the overall success of SEA and are ones which could, in fact, be undertaken at limited additional cost by the Gateway. Such activities might include:

- Operation of the existing gateway facility – casework administration, recording, enforcement of deadlines etc;
- Publication of SEA guidance and advice – best practice, SEA process etc;
- Periodically reviewing quality of Environmental Reports;
- Central point for environmental information (not handling data, but providing links to it and facilitating access for Responsible Authorities);
- Assist capacity building initiatives through contribution to training etc
- Management of consultations via the UK Regulations (for UK wide plans);
- Pre-screening tasks (see below);
- Developing/advising on possible indicators for Environmental Reports; and
- Stimulating/undertaking research into SEA process and method.

3.4 SEPA considers extension of the Gateway's remit along these lines would give a strong lead and focus for SEA. It would also, we consider, enable a proactive, integrated approach which would aid its successful implementation and reinforce Scotland's position as an aspiring world leader in this field.

3.5 We suggest that there may be a case for the Gateway to be made statutory with respect to some of these functions in order to ensure its continued existence as a focus and champion for SEA in Scotland, however we also recognise the limitations such statutory status may have in constraining the evolution of the Gateway as experience with SEA develops.

4. Pre-Screening

4.1 SEPA agrees that there is a need to introduce pre-screening as set out in Section 7 of the Bill in order that those plans with no, or minimal, environmental effects are not required to be subject to SEA. We have some concern that the pre-screening does not require Responsible Authorities to publish or justify the pre-screening determinations they make. SEPA considers that this is a weakness in pre-screening as it reduces transparency and takes place without any regulation regarding quality and consistency of decision making.

- 4.2 SEPA considers that this could be easily addressed by monitoring the use of the pre-screening process. For example, Responsible Authorities could be obliged to publish within a prescribed period a short summary of their pre-screening assessment and a very brief statement of reasons for determining that there will be no, or minimal, environmental effects. It may be useful for such statements to be sent to the Gateway which could in turn keep a simple register and do periodic assessments of pre-screening activity to check for consistency and robustness.
- 4.3 Statutory powers are available under Section 11 for Ministers to direct that a plan be subject to either screening or full assessment, which we would expect to be used where a Responsible Authority fails to undertake pre-screening appropriately.
- 4.4 The pre-screening process rests on interpretation of “no or minimal effects”. Clearly, to be effective, detailed definition of how to determine “no or minimal effects” will be required.

5. SEA and Sustainable Development

- 5.1 In Scotland, the focus of the Bill is strongly environmental and does not incorporate wider social or economic objectives. SEPA supports the approach in the Bill and considers that SEA will make a significant contribution to sustainable development.
- 5.2 One of the key benefits of SEA is that it provides information about the environmental effects of implementing a plan or programme. This is information that normally might not be available to many plan-makers, meaning that the environmental implications of a plan or programme are often less well understood. This contrasts with the social and economic implications which are often well understood and indeed often form the focus of the plan itself.
- 5.3 Accordingly SEPA, at the current time, supports the Executive’s position of focusing the Bill on SEA and not widening its scope to Sustainability Appraisal (SA), which takes into account social and economic issues. While SA is statutory south of the border, there has been a range of concerns¹ expressed about its robustness, transparency and focus, with the concern that such appraisals maximise economic objectives and can marginalise the environmental and social part of the assessment. In the current absence of robust and transparent processes for SA, SEPA concurs with this view and therefore supports the Scottish focus on SEA as set out in the Bill.
- 5.4 There is nothing in the Bill which precludes Responsible Authorities from undertaking SA. Indeed, where SA is undertaken robustly and transparently, SEPA would be comfortable with such an approach. Where SA is undertaken incorporating SEA, it will be imperative for Responsible Authorities to make the SEA component distinct and obvious in order to make it clear how they have met the requirements of the Bill. This will also help the Consultation Authorities in their assessment of Scoping Reports and Environmental Reports.

6. Resources

- 6.1 The Bill will have considerable resource implications for SEPA, both as a Consultation Authority and as a Responsible Authority. The effect of the Bill will be to significantly increase the number of plans, programmes and strategies on which SEPA will be statutorily consulted (the Financial Memorandum suggests up to some 350 per annum) and also increase the number of SEPA’s own plans, programmes and strategies that will be subject to SEA under the wider scope of the Bill. SEPA has allocated specific resources to SEA over the coming three years to meet these new duties.

¹ For example, see Royal Commission on Environmental Pollution (2002) “Environmental Planning” , HMSO, p97-98;and Carter J, Wood C, Baker M (2003) “Structure plan appraisal and the SEA Directive”, *Town Planning Review*, 74(4), p395-422

6.2 There is considerable uncertainty about the true resource implications of the Bill and all of those involved will need to better understand the volume of plans subject to SEA, the statutory and non statutory tasks it generates, the efficiency savings that can be made through automated practices and ways in which resources can be used to best effect. Accordingly, we feel that it would be extremely useful for a review to take place in two or three years time to more accurately assess resource issues. SEPA has agreed to become part of the Scottish Executive/CoSLA “pathfinder” project which will, over the next three years, provide detailed information based on case study analysis. It is hoped that this project will help inform resource issues.

7. Coverage of Schedule 3(6)(a) Issues

7.1 In its response to the draft Bill, SEPA highlighted the fact that the Consultation Authorities do not, between them, necessarily hold information about, or have competence for, all of the issues requiring to be assessed in SEA as set out in Schedule 3(6)(a). These include: Population, human health and certain aspects of climatic factors. It will be necessary for guidance to assert the need for Responsible Authorities to ensure that they have sufficient information regarding these issues before completing an Environmental Report.

8. Screening

8.1 On a point of detail, there are two timescales proposed for Responsible Authorities to publish determinations under screening – 14 days to publish the determination in a local newspaper (Section 10(2)(c)) and 28 days to send a determination to the Consultation Authorities (Section 10(1)). For ease of understanding, these timescales could be synchronised.

EXTRACT FROM THE SUBORDINATE LEGISLATION 16TH REPORT 2005

The Committee reports to the Parliament as follows—

1. At its meeting on 26th April 2005 the Committee determined that it did not need to draw the attention of Parliament to the instruments listed in the Annex 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 Farm Business Development (Scotland) Variation Scheme 2005, (SSI 2005/219) The Plant Health (Import Inspection Fees) (Scotland) Regulations 2005, (SSI 2005/216) The Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (Scotland) Regulations 2005, (SSI 2005/218)
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Instruments subject to annulment

The Plant Health (Import Inspection Fees) (Scotland) Regulations 2005, (SSI 2005/216)

9. The Committee considered that the Directive which was being implemented by these Regulations only seemed to sanction two methods of calculating the import fees which the Directive obliged member states to impose: the standard fees in Annex VIIIa of the Directive or an actual cost basis calculated by reference to specific criteria set out in the Directive. The Committee therefore asked the Executive for clarification of the legal basis on which the Regulations adopted a 10 percent uplift in the standard fees set out in the Directive.

10. The Executive has replied setting out the practical basis for the adoption of this approach. The Committee notes this explanation, and recognised the difficulties faced by the Executive in implementing its obligations as a result of the Directive not making definite provision for the conversion of the standard table of fees into currencies of non-Euro member states.

11. However, the Committee notes that the Executive has not been able to provide a specific legal basis for the adoption of this method of calculation and draws the attention of the lead Committee and Parliament to this instrument on the grounds that there are doubts as to whether it is intra vires.

12. The Committee also noted that the same approach to calculating these import fees has been used in the parallel English Regulations and agreed to ask

the Executive whether it (or the Department of Environment, Food and Rural Affairs) sought advice from the European Commission in the preparation of these Regulations. The Committee also agreed to ask the Executive to confirm whether it is aware of other subordinate legislation implementing Directives which fail to make any definite provision for the conversion of fees into currencies of non-Euro member states.

The Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (Scotland) Regulations 2005, (SSI 2005/218)

13. The same issue in relation to citation of a requirement to consult under EU law arises in relation to these Regulations as with the Miscellaneous Food Additives Amendment (Scotland) Regulations 2005 (SSI 2005/214) and the Smoke Flavourings (Scotland) Regulations 2005 (SSI 2005/215) above.

14. As the Committee has a clear outline of the Executive's current position on this matter, it draws the attention of the lead Committee and Parliament to this instrument on the grounds of defective drafting, in the same terms as paragraphs 5 to 7 of this report.

Paragraphs 5 to 7

5. The Committee raised the issue of citation of the obligation under Article 9 of Regulation 178/2002 to carry out consultation before Regulations relating to food safety are made. The Committee notes that, if an obligation to consult arises under domestic statutory law, the drafting convention is to narrate the obligation and its fulfilment in the preamble whereas, if the obligation to consult arises as a result of a provision of EU law, the policy of the Executive is to narrate the consultation requirement in the footnote to the preamble. The Committee noted, however, that no specific reference is made in the relevant footnotes to Article 9 of Regulation 178/2002. The Committee asked the Food Standards Agency (FSA) for clarification of its current position on the matter.

6. The response from the Food Standards Agency indicates that the drafting of the preamble in such instruments is a matter for the Office of the Solicitor to the Scottish Executive. It follows the drafting practice of not referring to Community provisions in the preamble of Scottish Statutory Instruments. The Agency also comments that the absence of such a reference would not of itself render an instrument invalid but that the essential element is compliance with the relevant Community obligation to consult. The FSA states that it has undertaken extensive consultation prior to the Regulations being made.

7. The Committee accepted that the consultation requirement has been fulfilled and that there was not an issue in relation to the vires of the instrument. The Committee, however, reached the view that failure to narrate the requirement in the preamble falls short of expected drafting standards. The Committee also notes that it is the Agency's practice in relation to instruments laid before the Westminster Parliament to refer to the Article 9 consultation requirement in the preamble. **The Committee therefore draws the attention of the lead Committee and Parliament to these Regulations on the grounds of defective drafting.**

ANNEX

Instruments subject to approval

The Farm Business Development (Scotland) Variation Scheme 2005,
(SSI 2005/219)

APPENDIX 3

The Plant Health (Import Inspection Fees) (Scotland) Regulations 2005 (SSI 2005/216)

1. On 19th April the Committee asked the Executive for an explanation of the following matter-

- “It is not clear to the Committee, however, upon what basis the 10% increase for exchange rate fluctuations is adopted since the Directive only appears to sanction two methods of calculation of fees: those being the standard fees set out in the Directive or an actual cost basis calculated by reference to specified criteria contained in Article 13(d)(1) of the Directive. The Committee asks the Executive for further information as to basis for adopting a blanket 10% increase.”

The Scottish Executive responds as follows:

2. As the Committee observes, the Directive provides [Article 13d(2)] for two methods of fee calculation: Member States can either “apply the standard fee as specified in Annex VIIIa” of the Directive; or they can set the level of fee “on the basis of a detailed cost calculation” by reference to criteria specified in Article 13d(1) of the Directive.

3. The standard fees in Annex VIIIa are in Euros. The Directive makes no provision for those Member States who have not adopted the Euro as their currency.

4. In these circumstances and considering that Members States may not charge less than the fees set out in Annex VIIIa, the 10% uplift is intended to avoid the situation where, because of exchange rate fluctuations, the fees converted into Sterling might fall below the Euro minimum. DEFRA have advised the Scottish Executive that 10% is the maximum of the range within which the Euro/Sterling exchange rate fluctuated during 2004. The 10% uplift is therefore based on empirical evidence of recent exchange rate fluctuations. Additionally, given that a principal purpose of the Directive is to ensure a degree of consistency of approach to the charging of fees across all Member States, the 10% uplift is reasonable and proportional in order to ensure that fees in Scotland are within the parameters of those charged elsewhere in the European Union.

5. The actual fees in the Schedules to the Regulations have been calculated by converting the fees set out in Annex VIIIa to Sterling using the Sterling/Euro exchange rate (EUR 1 = £0.6878) quoted by the European Central Bank on 3

March 2005, and then applying the 10% uplift. These figures are identical to those specified in DEFRA's parallel regulations for England (S.I. 2005/906).

6. Article 13d(2) of the Directive says that Member States must "apply the standard fee" and the Executive is of the view that these Regulations represent a reasonable application of the standard fees, taking into account the fact that the Euro is not the currency of the United Kingdom, and given the need, in the interests of legal accessibility, of expressing the fees in Sterling in our Regulations.

7. The Executive is of course still intending to follow the approach set out in the consultation conducted prior to the making of these Regulations; that is to apply the standard fees for one year until we have sufficient data to assess the actual cost of operating the new regime, and then to move to fees set according to a detailed cost calculation.

SSI Title and No:	The Plant Health (Import Inspection Fees) (Scotland) Regulations 2005, (SSI 2005/216)						
Laid Date:	14 th April 2005	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Bob King, ext. 44895						
Standing Order:	10.4 Subject to negative procedure within 40 days						
RECOMMENDATION							
Lead Committee:	Environment and Rural Development	Other Committees:					
Clerk Contact Room & No:	Mark Brough 85240	Clerk Contact No:					
Reason:	These Regulations implement Council Directive 2000/29/EC in relation to the collection of fees to cover the costs of the inspection of certain imports of plants, plant products and other objects from third countries provided for in Article 13a(1) of the Directive.						
Time Limit for Parliament to Deal with Instrument	23 rd May 2005	1st SLC Meeting	19 th April 2005				
		SLC reporting deadline	4 th May 2005				
Lead Committee To Report By:	16 th May 2005	*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 Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (Scotland) Regulations, (SSI 2005/218)						
Laid Date:	19 th April 2005	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Martin Morgan, ext. 46412						
Standing Order:	10.4 Subject to negative procedure within 40 days						
RECOMMENDATION							
Lead Committee:	Environment and Rural Development	Other Committees:					
Clerk Contact Room & No:	Mark Brough 85240	Clerk Contact No:					
Reason:	These Regulations amend the Bovine and Bovine Products (Trade) Regulations 1999 to give effect to the recommendation from the Spongiform Encephalopathy Advisory Committee the supply of collagen derived from hides of UK bovine to be processed then used in the preparation of food products destined for placing in the UK be permitted.						
Time Limit for Parliament to Deal with Instrument	28 th May 2005	1st SLC Meeting	26 th April 2005				
		SLC reporting deadline	9 th May 2005				
Lead Committee To Report By:	23 rd May 2005	*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 Horse Passports (Scotland) Regulations 2005 SSI/2005/223						
Laid Date:	22/04/2005	Responsible Minister:	Ross Finnie				
SE Contact:	Mary Bradley, SEERAD, 46177						
Standing Order:	10.4, Subject to negative procedure within 40 days.						
RECOMMENDATION							
Lead Committee:	Environment and Rural Development		Other Committees:				
Clerk Contact Room & No:	Mark Brough, 85240		Clerk Contact No:				
Reason:	The Regulations specify which organisations are authorised to issue passports and give them powers and duties, make provision for applications for and issue of passports, specify the languages of passports and make provision for horses entering Scotland.						
Time Limit for Parliament to Deal with Instrument	31/05/2005		1st SLC Meeting	03/05/2005			
			SLC reporting deadline	12/05/2005			
Lead Committee To Report By:	23/05/2005		*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 Land Management Contracts (Menu Scheme) (Scotland) Regulations 2005 SSI/2005/225						
Laid Date:	22/04/2005	Responsible Minister:	Ross Finnie				
SE Contact:	Christine Davidson, SEERAD, 46618						
Standing Order:	10.4, Subject to negative procedure within 40 days.						
RECOMMENDATION							
Lead Committee:	Environment and Rural Development		Other Committees:				
Clerk Contact Room & No:	Mark Brough, 85240		Clerk Contact No:				
Reason:	These regulations introduce the Land Management Contracts (Menu Scheme) in Scotland under the Common Agricultural Policy (CAP) Pillar 2, for farmers with land in Scotland. This instrument also amends the Agricultural Subsidies (Appeals) (Scotland) Regulations 2004 to extend coverage to the Land Management Contracts Menu Scheme.						
Time Limit for Parliament to Deal with Instrument	31/05/2005		1st SLC Meeting	03/05/2005			
			SLC reporting deadline	12/05/2005			
Lead Committee To Report By:	23/05/2005		*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.