



Environment and Rural Development Committee

21st Meeting, 2005

Thursday 8 September 2005

The Committee will meet at 3.30 pm in Committee Room 3

1. **Declaration of interests:** The Convener will invite new members of the Committee to declare any relevant interests.
2. **Items in private:** The Committee will consider whether to take item 5 in private and whether to consider a draft report on its rural development inquiry in private at future meetings.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005, (SSI 2005/308);

the Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005, (SSI 2005/316);

the Financial Assistance for Environmental Purposes (Scotland) Order 2005, (SSI 2005/324);

and will consider a response from the Scottish Executive to points raised on the instruments at the Committee's meeting on 28 June 2005.

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

the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005, (SSI 2005/311);

the Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2005, (SSI 2005/323);

the Cereal Seed (Scotland) Regulations 2005, (SSI 2005/328);

the Fodder Plant Seed (Scotland) Regulations 2005, (SSI 2005/329);

the Pollution Prevention and Control (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/340).

5. **Rural development inquiry:** The Committee will consider evidence received to date for this inquiry.

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

The following papers are attached:

<u>Agenda Item 3</u>	
The Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005, (SSI 2005/308)	ERD/S2/05/21/3a
The Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005, (SSI 2005/316)	ERD/S2/05/21/3b
The Financial Assistance for Environmental Purposes (Scotland) Order 2005, (SSI 2005/324)	ERD/S2/05/21/3c
Extract from the Subordinate Legislation Committee's 26th Report	ERD/S2/05/21/3d
Letter from the Minister for Environment and Rural Development	ERD/S2/05/21/3e
<u>Agenda Item 4</u>	
The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005, (SSI 2005/311)	ERD/S2/05/21/4a
Extract from the Subordinate Legislation Committee's 29th Report	ERD/S2/05/21/4b
The Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2005, (SSI 2005/323)	ERD/S2/05/21/4c
The Cereal Seed (Scotland) Regulations 2005, (SSI 2005/328)	ERD/S2/05/21/4d
The Fodder Plant Seed (Scotland) Regulations 2005, (SSI 2005/329)	ERD/S2/05/21/4e
The Pollution Prevention and Control (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/340)	ERD/S2/05/21/4f
Extract from the Subordinate Legislation Committee's 30th Report	ERD/S2/05/21/4g
<u>Agenda Item 5</u>	
Briefing paper (<i>for members only</i>)	ERD/S2/05/21/5a (to follow)

SSI Title and No:	The Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005, (SSI 2005/308)						
Laid Date:	7 th June 2005	Responsible Minister:	Lewis Macdonald, Deputy Minister for Environment and Rural Development				
SE Contact:	Duncan Isles, ext. 44435						
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:	This Order adds thirteen species of plant to the list of species of plants which may not be planted or otherwise caused to grow in the wild.						
Time Limit for Parliament to Deal with Instrument	19 th September 2005		1st SLC Meeting	14 th June 2005			
			SLC reporting deadline	27 th June 2005			
Lead Committee To Report By:	12 th September 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 Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005, (SSI 2005/316)						
Laid Date:	8 th June 2005	Responsible Minister:	Lewis Macdonald, Deputy Minister for Environment and Rural Development				
SE Contact:	Rosi Waterhouse, ext. 47578						
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 provide for the enforcement and execution of specified provisions of Regulation EC 1946/2003 concerning the transboundary movements of genetically modified organisms.						
Time Limit for Parliament to Deal with Instrument	20 th September 2005		1st SLC Meeting	14 th June 2005			
			SLC reporting deadline	28 th June 2005			
Lead Committee To Report By:	12 th September 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 Financial Assistance for Environmental Purposes (Scotland) Order 2005, (SSI 2005/324)						
Laid Date:	9 th June 2005	Responsible Minister:	Lewis Macdonald, Deputy Minister for Environment and Rural Development				
SE Contact:	John Cummings, Forestry Commission, tel. 0131 334 0303						
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:	This Order provides for the Scottish Ministers to give financial assistance to, or for the purposes of, the Bio-energy Infrastructure Scheme for Scotland.						
Time Limit for Parliament to Deal with Instrument	21 st September 2005	1st SLC Meeting	14 th June 2005		SLC reporting deadline	29 th June 2005	
Lead Committee To Report By:	12 th September 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.

Subordinate Legislation Committee

Extract from the 26th Report, 2005 (Session 2)

The Committee reports to the Parliament as follows—

Instruments subject to annulment

The Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005, (SSI 2005/308)

1. The Committee asked why no Executive Note was provided with this instrument.
2. The Executive has stated that the content and effect of the Order were considered to be “self-evident” and that the text of the Order was “self-explanatory” and therefore an Executive Note was not required. The Committee found the Order neither self-evident or self-explanatory and finds the Executive’s justification for not providing an Executive Note in this instance unacceptable.
3. There is a strong presumption that an Executive Note should always be provided except where it is “clearly superfluous”. The Committee’s view is that in this case a note was not clearly superfluous and would have been of use in the scrutiny of the Order. The Committee noted, for example, that neither the instrument or the Explanatory Note mention that the instrument is connected with criminal offences and penalties.
4. **The Committee draws this instrument to the attention of the lead Committee and Parliament on the grounds of failure to follow proper legislative practice.**

The Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005, (SSI 2005/316)

5. The Executive was asked to comment on whether the provisions in paragraph 6 of Schedule 2 could breach the right of a person not to incriminate oneself as guaranteed by Article 6 of ECHR.
6. The Executive has indicated that the inspectors enforcing the Regulations will be bound by the terms of the Human Rights Act and cannot lawfully exercise their powers so as to breach it.
7. While the Committee accepts the Executive’s position, it is still the case that persons affected by the instrument would not necessarily be aware that the requirement to answer questions put by an inspector is subject to the general right not to be compelled to incriminate themselves. This issue would have been addressed had this right been made absolutely clear in the Regulations.

8. The Committee therefore draws the attention of the lead Committee and Parliament to the instrument on the grounds of an unduly limited use of the power by way of failure to include an appropriate protection on the face of the Regulations.

APPENDIX 1

THE WILDLIFE AND COUNTRYSIDE ACT 1981 (VARIATION OF SCHEDULE) (SCOTLAND) ORDER 2005 (SSI 2005/308)

In its letter of 14 June to Catherine Hodgson, the Subordinate Legislation Committee commented as follows –

“The Executive is asked to explain why no Executive Note was provided with this instrument.”

The Scottish Executive Environment and Rural Affairs Department responds as follows –

No Executive Note was provided on this occasion because the content and immediate effect of the Order were considered to be self-evident. The Order adds the plants species listed in the table in Article 2 of the Order to Part II of Schedule 9 to the Wildlife and Countryside Act 1981. The Explanatory Note explains that these are species which may not be planted or otherwise caused to grow in the wild. It was considered that, given the self-explanatory text of the Order itself and the further information provided in the Explanatory Note, a separate Executive Note was not necessary in connection with this particular Instrument.

APPENDIX 2

THE GENETICALLY MODIFIED ORGANISMS (TRANSBOUNDARY MOVEMENTS) (SCOTLAND) REGULATIONS 2005 (SSI 2005/316)

In its letter of 14 June to Catherine Hodgson, the Committee commented as follows

“The Committee noted that paragraph 6 of Schedule 2 gives inspectors powers to ask questions of anyone whom they have reasonable cause to consider are able to provide information relevant to any test or inspection under the Schedule. The Committee noted that failure to comply with this is a criminal offence.

The Committee considered that it is arguable that the provisions could breach the right of a person not to incriminate oneself as guaranteed by Article 6 of ECHR. The Executive is asked to comment.”

The Scottish Executive responds as follows -

The Executive notes the Committee’s comments and can confirm that there was no intention that the power conferred be used in a way incompatible with the Convention or Convention rights. Indeed the Department considers that the provision could not lawfully be employed so as to breach Article 6 of ECHR. In accordance with section 101 of the Scotland Act 1998, the provision requires to be read so as to be compatible with the Convention. In addition, the inspectors enforcing these Regulations are in accordance with the Human Rights Act 1998 themselves bound by the requirements of the Convention and cannot lawfully exercise their powers so as to breach it.



SCOTTISH EXECUTIVE

Agenda Item 3
**Environment and Rural
Development Committee**

8 September 2005
ERD/S2/05/21/3e

Minister for Environment & Rural Development
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August 2005

Thank you for your letter of 7 July 2005 in which you sought further information in relation to a number of statutory instruments which the Committee had considered at its meeting on 28 June.

The Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005 (SSI 2005/308)

I know that Lewis Macdonald was keen to keep the Committee abreast of developments in relation to invasive non-native species and to update members on matters arising from parliamentary scrutiny of the Nature Conservation (Scotland) Bill. The Committee will of course recall his letter of 8 June which provided, *inter alia*, much of the contextual information which you clearly feel ought to have been included in an Executive Note.

That said, I do acknowledge what you say about the value of an Executive note as a mechanism for ensuring that information can be more readily communicated to as wide an audience as possible. Whilst I expect we may continue, on occasion, to disagree about the extent to which an instrument is self-explanatory, I am more than happy to provide an Executive note whenever one is likely to prove of genuine assistance to interested parties. Given your Committee's evident strength of feeling in this particular instance, I have set out the further information requested in relation to SSI 2005/308 in the form of an Executive note (attached at Annex A).

The Genetically Modified Organisms (Transboundary Movements) (Scotland) Regulations 2005 (SSI 2005/316)

The Scottish Executive consultation on the administration and enforcement of EC regulation 1946/2003 on the Transboundary movements of Genetically Modified Organisms (GMOs) in

Scotland, concluded on the 22 April 2005. We received 16 responses all of which were considered carefully in developing the Scottish Regulations SSI 2005/316. A copy of all responses to the consultation is available in the Scottish Executive Library, and in the Scottish Parliament Library.

The EC Regulation aims to establish a common system of notification and information for transboundary movements of genetically modified organisms and implements these aspects of the Cartagena Protocol on Biosafety which are not already covered by existing EC legislation. The Cartagena Protocol's overall objective is to contribute to ensuring an adequate level of protection for the safe transfer, handling and use of genetically modified organisms. The main practical obligation imposed by the Regulation is to require exporters of GMOs to provide information directly to authorities in destination countries. It has no effect on existing decision making processes in relation to regulating release of GMOs in Scotland or elsewhere in the EU.

You also ask about the recent case where, in late March 2005, the US authorities advised the European Commission that, for the past four years, unauthorised GM Bt10 maize seed had been supplied to some US farmers in error in place of GM Bt11 maize. Over a four year period it is estimated that these contaminating seeds could have produced a very low level of contamination of the American maize harvest, equivalent to about 0.01% of the total American maize acreage at that time. It is possible that some of this unauthorised GMO Bt10 contaminant might have entered US export channels and in consequence may have entered the EU.

Under the transboundary regulations no initial transboundary movements of GMOs intended for deliberate release should take place without explicit authorisation of the importing country, and the exporter must notify the parties with the minimum information specified in Annex 1 of the Council Regulation. In this case, because there was a possibility that accidental contamination had occurred prior to the goods being imported, there was an EU decision to treat the product as a potentially unauthorised GM event, until contrary information was available from the US authorities. Commission decision 2005/317/EC was therefore adopted on 18 April 2005, and was implemented in Scotland by The Feed (Corn Gluten Feed and Brewers Grains) (Scotland) Regulations 2005. The Regulations prohibit the first placing on the market of certain maize products originating from the United States of America (defined as "controlled products" in regulation 2 (1)) unless, as required by Article 2 of the Commission Decision, it can be demonstrated that the products do not contain Bt 10 maize or feed produced from Bt 10 maize. Local Authorities in the UK are responsible for enforcing this requirement. Article 6 of Commission Decision 2005/317 requires the measure to be reviewed by 31 October 2005 at the latest. To inform the review, Member States are asked to provide the Commission with data on its effectiveness in detecting imported consignments which may contain Bt10. The Food Standards Agency (FSA), as the UK competent authority for the evaluation of the safety of GM foods and feeds, is co-ordinating a small-scale sampling exercise to help inform the Commission's review.

Finally, you ask about our intentions for consultation on co-existence of GM and conventional crops. Our current plans are to issue a consultation document on these matters later this year.

The Financial Assistance for Environmental Purposes (Scotland) Order 2005 (SSI 2005/324)

While this scheme is positive and addresses some of the issues the Committee has been discussing, I would not want to raise the hopes of the Committee. The instrument was introduced in order to enable payments to be made in respect of a scheme which has already closed. However, as you

know, Ministers accepted the recommendations of the FREDS report and other measures are still being considered to promote the uptake of biomass.

Early in 2002 the Prime Minister announced that £100 million would be put into initiatives supporting renewable energy. Of this, £3.5 million was earmarked for 'grants for energy crops and forestry wood-fuel physical and market infrastructure', over a three year period, as one of the measures to encourage development of renewable energy. DEFRA signalled their intention to run a consultation and introduce the scheme (it was thought then) as a UK scheme.

Officials from SEERAD, DEFRA, Forestry Commission and from the other administrations had been involved with the development of the scheme, in which DEFRA took the lead, and legal advice obtained at the time (by DEFRA) favoured a UK scheme. The guidance seeking applications was finally launched in October 2004, and applications closed in February 2005.

At that time it became clear that the scheme could not easily be managed as a UK scheme, and that the simplest way of proceeding was to create a Bio-energy Infrastructure Scheme for Scotland, so that we could draw down the payments for Scottish applicants from the extra funds provided by Treasury. The Scottish applications for funding are still being considered but it has been agreed with DEFRA that we can allocate around £400,000. Contracts with applicants will be signed during the next two to three months.

The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005 (SSI 2005/332)

The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005 require the farming method to be applied on the outer surface of egg packs in clearly visible and legible type. The description of the farming method for eggs produced by hens in cages is 'eggs from caged hens'. There is a further requirement for this information to be indicated on the display shelves of the eggs in such a manner as to be clearly and unambiguously visible to the consumer.

The statutory requirements for information on egg boxes have been made clear to the trade and arrangements are in place to ensure early compliance. Many egg packs already fully meet the requirements of the legislation. With their relatively high turnover, we expect that the multiples will become fully compliant by September as the slower moving lines are replaced with new packaging. The multiples account for around 90% of the eggs from caged hens sold by retailers in Scotland. The rest of the trade may take a little longer to comply. The Department's Egg and Poultry Unit inspectors are assessing compliance and providing advice during their visits to registered packing centres, the aim being to ensure that all egg packs comply with the regulations as early as possible.

I trust this information will be helpful.

ROSS FINNIE

ANNEX A

Executive Note

The Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005 (SSI 2005/308)

The above instrument was made by Scottish Ministers in exercise of the powers conferred on them by section 22(1)(c) of the Wildlife and Countryside Act 1981 and of all other powers enabling them in that behalf. The instrument is subject to negative resolution procedure and extends to Scotland only.

Purpose and Effect

The Order (“The Wildlife and Countryside Act 1981 (Variation of Schedule) (Scotland) Order 2005”) adds thirteen non-native plant species to Part II of Schedule 9 to the 1981 Act. The Order therefore has the effect of making it an offence, by virtue of section 14(2) of the 1981 Act, for any person to plant or otherwise cause to grow in the wild any plant of the species listed, or any hybrid of such a plant.

Policy Objectives

Invasive non-native species are one of the single most significant threats to global biodiversity. Article 8h of the 1992 Convention on Biological Diversity, to which the United Kingdom is a signatory, requires action to “prevent the introduction of, or to control or eradicate, those alien species which threaten ecosystems, habitats and species”. This requirement is further expressed in Article 11 of the Birds Directive (79/409/EEC) and Article 22(b) of the Habitats Directive (92/43/EEC) and is consequently a matter of European law.

The current instrument (SSI 2005/308) forms part of a suite of recent measures which seek to address the threats posed by invasive non-native species. These include amendments to primary legislation made by the Nature Conservation (Scotland) Act 2004, the launch in June 2005 of a Horticultural Code of Practice for Scotland and the joint creation by the Scottish Executive, DEFRA and the Welsh Assembly Government of a new GB-wide co-ordinating group on non-natives.

Updating Part II of Schedule 9 to the Wildlife and Countryside Act 1981 by means of SSI 2005/308 is intended to help ensure that existing primary legislation remains relevant to current challenges.

Prior to this amendment, only Japanese knotweed (*Polygonum cuspidatum*, or *Fallopia japonica*), giant hogweed (*Heracleum mantegazzianum*) and several seaweeds were listed as invasive non-native plants in the Schedule. There has, however, been increasingly clear evidence of the actual and potential threat from other non-native plant species which were not previously listed.

The need to amend Schedule 9 was debated in some detail in the course of Stage 2 consideration of the Nature Conservation (Scotland) Bill. The plant species which have now been added to Schedule 9 were originally the subject of an amendment proposed by Mark Ruskell MSP. In responding to the proposed amendment, the then deputy Minister for the Environment and Rural Development, Allan

Wilson MSP, responded positively to the list of proposed additions and agreed that changes to Schedule 9 should be the subject of a formal consultation by the Scottish Executive.

Consultation

The amendments made by this instrument were the subject of a formal consultation by the Scottish Executive, launched in March 2004. That consultation took place in conjunction with a wider consultation on the key recommendations to emerge from the GB Working Group report on invasive non-native species, A Review of Non-native Species Policy. That consultation satisfied the requirement to give any local authority affected and any other person affected an opportunity to submit objections or representations with respect to the proposals, in accordance with section 26(4)(a) of that Act. Consultation with Scottish Natural Heritage has also been undertaken in accordance with section 22(2A) of the Wildlife and Countryside Act 1981. Analysis of the consultation responses indicated that there was overwhelming support for the addition of the proposed plant species to Part II of Schedule 9.

Financial Effects

The instrument has no financial effects on the Scottish Executive or any other organisation. It should be noted that the prohibition on the spread of the listed species in the wild does not prevent their continuing use, in a responsible manner, for legitimate horticultural and related purposes (e.g. in a garden or an aquarium).

SCOTTISH EXECUTIVE ENVIRONMENT AND RURAL AFFAIRS DEPARTMENT

August 2005

SSI Title and No:	The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2005, (SSI 2005/311)						
Laid Date:	8 th June 2005	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Philip Galbraith, ext. 46066						
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:	This Order provides for the enforcement of the provisions of Council Regulation EC 27/2005 which sets out Quotas for the year 2004 for EC vessels and for Third country vessels which fish in EC waters.						
Time Limit for Parliament to Deal with Instrument	20 th September 2005		1st SLC Meeting	14 th June 2005			
			SLC reporting deadline	28 th June 2005			
Lead Committee To Report By:	12 th September 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.

Subordinate Legislation Committee

Extract from the 29th Report, 2005 (Session 2)

The Committee reports to the Parliament as follows—

**The Sea Fishing (Enforcement of Community Quotas and Third
Country Fishing Measures) (Scotland) Order 2005, (SSI 2005/311)**

1. The Community Regulation for which this Order makes enforcement provision came into force on 1 January 2005. It has usually been the case that instruments such as this are made earlier in the year in order to ensure timeous implementation for proper enforcement of provisions.
2. The Executive has explained that the delay between the Community Regulation coming into force and the laying of this instrument is due to technical difficulties relating to the calibration and sealing of weighing equipment required under new provisions introduced by the Council Regulation.
3. The Committee notes the Executive's explanation but regrets that the delay in bringing forward this instrument has meant that the proper enforcement of the provisions in the Community legislation, which are in the form of a Regulation and therefore directly applicable, has been delayed for a period of 6 months.
4. The Committee draws this point to the attention of the lead Committee and Parliament for information.

SSI Title and No:	The Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2005, (SSI 2005/323)						
Laid Date:	9 th June 2005	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Allan McFarlane, ext. 46117						
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 provide for the administration and enforcement of Regulation EC 1774/2002 laying down health rules concerning animal by-products not intended for human consumption, in relation to the disposal of unused on-board catering supplies.						
Time Limit for Parliament to Deal with Instrument	21 st September 2005		1st SLC Meeting	21 st June 2005			
			SLC reporting deadline	29 th June 2005			
Lead Committee To Report By:	12 th September 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	

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SSI Title and No:	The Cereal Seed (Scotland) Regulations 2005, (SSI 2005/328)						
Laid Date:	9 th June 2005	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Ann Watson, ext. 44451						
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 consolidate the Cereal Seed Regulations 1993 and provide for the implementation of Community obligations in relation to Moisture content and seed sampling, testing and, providing there is a control plot which has been satisfactory, crop inspections						
Time Limit for Parliament to Deal with Instrument	21 st September 2005		1st SLC Meeting	21 st June 2005			
			SLC reporting deadline	29 th June 2005			
Lead Committee To Report By:	12 th September 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	

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SSI Title and No:	The Fodder Plant Seed (Scotland) Regulations 2005, (SSI 2005/329)						
Laid Date:	9 th June 2005	Responsible Minister:	Ross Finnie, Minister for Environment and Rural Development				
SE Contact:	Ann Watson, ext. 44451						
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 consolidate the Fodder Plant Seeds Regulations 1993 and provide for the implementation of Community obligations in relation to seed sampling, testing and, providing there is a control plot which has been satisfactory, crop inspections and the minimum germination standard for seed of field beans.						
Time Limit for Parliament to Deal with Instrument	21 st September 2005		1st SLC Meeting	21 st June 2005			
			SLC reporting deadline	29 th June 2005			
Lead Committee To Report By:	12 th September 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	

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SSI Title and No:	The Pollution Prevention and Control (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/340)						
Laid Date:	9 th June 2005	Responsible Minister:	Lewis Macdonald, Deputy Minister for Environment and Rural Development				
SE Contact:	Richard Robertson, ext. 40179						
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 make a number of correctional or deregulatory amendments to the Pollution Prevention and Control (Scotland) Regulations 2000, (SSI 2000/323).						
Time Limit for Parliament to Deal with Instrument	21 st September 2005	1st SLC Meeting	21 st June 2005		SLC reporting deadline	29 th June 2005	
Lead Committee To Report By:	12 th September 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	

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Subordinate Legislation Committee

Extract from the 30th Report, 2005 (Session 2)

The Committee reports to the Parliament as follows—

The Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2005, (SSI 2005/323)

1. The Executive was asked for explanation of the delay between Regulation (EC) No. 1774/2002 becoming applicable and the coming into force of this instrument.
2. The Executive acknowledges and regrets the delay. In explanation the Executive comments that the instrument required cross-departmental consultation in relation to the “fit” between it and the scheme for the management and control of waster by landfill.
3. The Committee notes the Executive’s explanation and acknowledges the importance of cross-departmental consultation prior to making provision for enforcement of this EU obligation. However, the Committee would have found it useful to have had further background information on the reasons for the delay, and in particular why the enforcement provision was brought forward in Scotland much later than the corresponding Westminster instrument.
4. **The Committee draws the attention of the lead Committee and Parliament to the delay in making provision for the enforcement of this EU obligation.**

The Cereal Seed (Scotland) Regulations 2005, (SSI 2005/328)

5. The Committee raised 3 points with the Executive. Firstly, the Committee asked why section 17 of the Plant Varieties and Seeds Act 1964 has not been cited as an enabling power.
6. The Executive’s view is that section 17 is not an enabling power, the Regulations being made under the enabling powers in sections 16 and 36 of the Plant Varieties and Seeds Act 1964. The Executive further explains that the wording of section 17, “if and so far as seeds regulations provide/apply” means that section 17 must be triggered by the Regulations to have effect.
7. While the Committee recognises that section 17 is not expressed directly as an enabling power, the section is one through or from which regulation 24 derives its validity and, as such, should be expressed as an enabling power.
8. **The Committee considers that it is important for the reader of an instrument to be able to determine under what powers that instrument is made and therefore draws these Regulations to the attention of the lead**

Committee and Parliament on the grounds of failure to follow proper legislative practice.

9. In relation to paragraph 12 of Part VI of Schedule 6 to the Regulations the Committee asked the Executive to clarify whether the reference to regulation 21(5) was correct.

10. The Executive has confirmed that this reference should be to regulation 22(6) and has undertaken to amend the reference at the next available legislative opportunity.

11. The Executive was also asked to clarify why paragraph 16 of Part VI of Schedule 6 imposes both an objective test as sub-paragraph (a) and a subjective test at sub-paragraph (b) in relation to the same subject matter.

12. The Executive considers that sub-paragraph (b) is superfluous and has undertaken to remove it at the next legislative opportunity.

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

The Fodder Plant Seed (Scotland) Regulations 2005, (SSI 2005/329)

14. The Committee raised 5 points with the Executive on this instrument. The first three of these points are the same as those raised on SSI 2005/328 (see above) and the attention of the lead Committee and Parliament is drawn to the Committee's comments on that instrument which also apply here.

15. The Committee raised two further points on this instrument. Firstly, the Committee asked the Executive to confirm whether the drafting of the definition of "Basic Seed" in paragraph (c)(1) of regulation 3 is correct, given that although the conditions in paragraphs (a) and (b) appear to be cumulative, the definition refers to (a) **or** (b) **and** (c).

16. The Executive has confirmed that the conditions are cumulative and has undertaken to amend this at the next legislative opportunity.

17. Finally, the Executive was asked for an explanation of reference in regulation 9(1)(b)(ii) to Articles 6(1)(a) and (b) of the Directive given that no such Articles appear to exist.

18. The Executive has explained that the references ought to be to Articles 4a(1)(a) and (b) and has undertaken to rectify this at the next legislative opportunity.

19. The Committee draws the attention of the lead Committee and Parliament to this instrument on the grounds of defective drafting, as acknowledged by the Executive.

The Pollution Prevention and Control (Scotland) Amendment (No.2) Regulations 2005, (SSI 2005/340)

20. The Executive was asked to explain why regulation 5 states that new paragraph (1) is subject to (4) and (5) as paragraph (5) appears to be a separate condition in its own right.

21. The Executive has explained that its intention in making paragraph (1) subject to paragraph (5) was to make it plain that there was no implied authority in all cases to proceed with the “change in the operation” of the installation or mobile plant referred to simply by virtue of having given the notice required.

22. The Committee considers that there is nothing in paragraph (1) that would imply that work could be carried on once notification has been given. However, the Committee notes that this point should not adversely affect the operation of the regulation.

23. The Committee reports this instrument on the grounds of failure to follow proper legislative practice by reason of the inclusion of superfluous words.

24. The Committee noted that a number of amendments had been made that added the words “mobile plant” after the word “installation” but that a similar amendment had not been made to regulation 17(8).

25. The Executive has confirmed that this is an error and intends to bring forward an appropriate amendment at the next appropriate opportunity.

26. The Committee draws the attention of the lead Committee and Parliament to this instrument on the grounds of defective drafting, as acknowledged by the Executive.

APPENDIX 1

THE PRODUCTS OF ANIMAL ORIGIN (THIRD COUNTRY IMPORTS) (SCOTLAND) AMENDMENT REGULATIONS 2005, (SSI 2005/323)

The Executive refers to the Committee's letter of 21 June 2005 in which the Subordinate Legislation Committee asks the following question:

The Committee asks the Executive for explanation of the delay between Regulation (EC) No. 1774/2002 becoming applicable and the coming into force of this instrument.

The Scottish Executive responds as follows:

The Executive notes the delay between Regulation (EC) No. 1774/2002 becoming applicable and the coming into force of this instrument on 1 July 2005, and regrets that delay. However, before this instrument could be made there required to be cross-departmental consultation in relation to the issue of the "fit" between it and the scheme for the management and control of waste by landfill. The instrument was made as quickly as possible.

APPENDIX 2

THE CEREAL SEED (SCOTLAND) REGULATIONS 2005, (SSI 2005/328)

On 21 June 2005 the Subordinate Legislation Committee requested an explanation of the following matters-

1. The Executive is asked to explain why section 17 of the 1964 Act has not been cited as an enabling power.
2. The Committee seeks clarification from the Executive as to whether the reference to regulation 21(5) in paragraph 12 of Part VI of Schedule 6 to the Regulations is correct.
3. The Executive is asked to clarify why paragraph 16 of Part VI of Schedule 6 imposes both an objective test at sub-paragraph (a) and a subjective test at sub-paragraph (b) in relation to the same subject matter.

The Scottish Executive responds as follows-

1. With the exception of subsection (5) which may be disregarded for the purposes of this response, Section 17 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act") only has effect insofar as explicitly provided for, or applied by, seeds regulations. Regulation 24 of the Cereal Seed (Scotland) Regulations 2005 ("the Regulations") does so. Section 17 is not, in the Executive's view, an enabling power. The Regulations are made under the authority of enabling powers in sections 16 and 36 of the 1964 Act. However, the formula adopted for the wording of section 17 is "if and so far as seeds regulations provide/apply". In effect, section 17 must be triggered by the Regulations. The Committee may wish to note in passing that the Regulations are consistent with the Cereal Seed (England) Regulations 2002 (S.I. 2002/3173) in this regard.
2. The Executive confirms that reference to regulation 21(5) in paragraph 12 of Part VI of Schedule 6 to the Regulations is incorrect. The reference should in fact be to regulation 22(6). The reconciliation of printing records is an established practice that is under the direct control of the Scottish Ministers. This provision is used by the Scottish Ministers and by licensed seed samplers and the Executive does not consider that it will cause confusion to users pending amendment. The reference will be amended at the next available legislative opportunity.
3. In respect of paragraph 16 of Part VI of Schedule 6, the Executive considers that sub-paragraph (b) is superfluous. If the requirements of sub-paragraph (a) have in fact been met, then the Scottish Ministers will be duly satisfied and accordingly there is no pressing need to remove sub-paragraph (b) now. The Executive intends to remove sub-paragraph (b) at the next available legislative opportunity.

APPENDIX 3

THE FODDER PLANT SEED (SCOTLAND) REGULATIONS 2005 (SSI 2005/329)

On 21 June 2005 the Subordinate Legislation Committee requested an explanation of the following matters-

1. The Executive is asked to explain why section 17 of the 1964 Act has not been cited as an enabling power.
2. The Committee seeks clarification from the Executive as to whether the reference to regulation 21(5) in paragraph 13 of Part VI of Schedule 6 to the Regulations is correct.
3. The Executive is asked to clarify why paragraph 17 of Part VI of Schedule 6 imposes both an objective test at sub-paragraph (a) and a subjective test at sub-paragraph (b) in relation to the same subject matter.
4. The Committee asks the Executive for clarification of the drafting of the reference in paragraph (c)(i) of the definition on "Basic Seed" in regulation 3, given that the requirements in paragraph (a) and (b) appear to be cumulative, not alternatives.
5. Finally, the Committee asks for explanation of the reference in regulation 9(1)(b)(ii) to Articles 6(1)(a) and 6(1)(b) of the Fodder Plant Seed Directive given that no such articles appear to exist in that Directive.

The Scottish Executive responds as follows-

1. With the exception of subsection (5) which may be disregarded for the purposes of this response, section 17 of the Plant Varieties and Seeds Act 1964 ("the 1964 Act") is not, in the Executive's view, an enabling power. Section 17 only has effect insofar as explicitly provided for, or applied, by seeds regulations. In effect, section 17 must be triggered by Regulations. Regulation 24 of the Fodder Plant Seed (Scotland) Regulations 2005 ("the Regulations") does so. The Regulations are made under the authority of enabling powers in sections 16 and 36 of the 1964 Act.
2. The Executive confirms that reference to regulation 21(5) in paragraph 13 of Part VI of Schedule 6 to the Regulations is incorrect. The reference should in fact be to regulation 22(6). The reconciliation of printing records is an established practice that is under the direct control of the Scottish Ministers. This provision is used by the Scottish Ministers and by licensed seed samplers and the Executive does not consider that it will cause confusion to users pending amendment. The Executive intends to amend the provision at the next available legislative opportunity.
3. In respect of paragraph 17 of Part VI of Schedule 6, the Executive considers that sub-paragraph (b) is superfluous. Pending future amendment, if the

requirements of sub-paragraph (a) have in fact been met then the Scottish Ministers will be duly satisfied and accordingly there is no pressing need to remove sub-paragraph (b) now. The Executive intends to remove sub-paragraph (b) at the next available legislative opportunity.

4. The Executive agrees that the definition of “Basic Seed” in relation to a component of a hybrid variety of fodder kale is unclear. The intention, correctly provided for by the use of “and” at the end of paragraph (b), is that paragraphs (a) and (b) should be cumulative. However in paragraph (c)(i) it is erroneously provided that the Scottish Ministers should have certified or confirmed that either (a) or (b) is satisfied, although the use of “conditions” in the plural does again suggest the cumulative nature of those requirements. There should be no reference to “paragraph (c)” in paragraph (c)(i). The Executive’s view is that the cumulative nature of paragraphs (a) and (b) is unaffected and will continue to form the basis on which official certificates and breeder’s confirmations are issued by the Scottish Ministers in respect of Basic Seed in relation to a component of a hybrid variety of fodder kale. The Executive intends to amend the provision at the next available legislative opportunity together with the similar provision at paragraph (c)(ii) of the same definition.

5. The Executive agrees that the references in regulation 9(1)(b)(ii) to Articles 6(1)(a) and 6(1)(b) of the Fodder Plant Seed Directive are incorrect. The references should be to Articles 4a.1(a) and 4a.1(b). Given that Articles 6(1)(a) and 6(1)(b) do not exist and that the basis of the authorisations referred to in regulation 9(1)(b)(ii) can readily be interpreted from the overall terms of the provision to mean references to Articles 4a.1(a) and 4a.1(b), the Executive does not consider that the provision will cause confusion prior to amendment. It is the Executive’s intention to amend the provision at the next legislative opportunity. The Executive is grateful to the Committee for drawing this matter, and the matters referred to earlier, to its attention.

APPENDIX 4

THE POLLUTION PREVENTION AND CONTROL (SCOTLAND) AMENDMENT (NO.2) REGULATIONS 2005, (SSI 2005/340)

In its letter of 21 June to Catherine Hodgson, the Committee requested an explanation of the following matters-

“The Executive is asked to explain why regulation 5 states that new paragraph (1) is subject to paragraph (4) and (5)” as paragraph (5) appears to be a separate condition in its own right.

The Committee notes that a number of amendments add the words “mobile plant” after the word “installation” but that a similar amendment has not been made to regulation 17(8). The reason for this is not obvious and the Committee would welcome clarification from the Executive.”

The Scottish Executive responds as follows:

1. The Executive notes the Committee’s comments regarding new paragraph (1) (regulation 5). The intention in making that paragraph “subject to” paragraph (5) was to make plain that there was no implied authority in all cases to proceed with the “change in the operation” of the installation or mobile plant referred to in paragraph (1) simply by virtue of having given the notice required. We consider that in that sense paragraph (1) is indeed subject to paragraph (5) which precludes giving effect to such change. We do not consider therefore that the words “subject to paragraph...(5)” in any way adversely affect the operation of the regulation.
2. The Executive is grateful to the Committee for bringing to attention regulation 17(8) in the context of amendments which add a reference to “mobile plant” after the word “installation”. The Executive agrees that such a consequential amendment to regulation 17(8) would be helpful and intends to bring that forward at the next appropriate opportunity.