



## Environment and Rural Development Committee

23rd Meeting, 2006

Wednesday 28 June 2006

The Committee will meet at 10.00 am in Committee Room 6.

1. **Petition 807:** The Committee will consider Petition 807 by James Mackie calling for the Scottish Parliament to urge the Scottish Executive to conduct an inquiry into the influence of supermarkets in the food chain, and to examine in particular safety issues arising from the use of chemicals to extend the shelf life of products and from central purchase and distribution and the impact of supermarket trading on local economies and small producers.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—
  - the Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2006, (SSI 2006/311);
  - the Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006, (SSI 2006/313);
  - the Plant Health (Potatoes) (Scotland) Order 2006, (SSI 2006/319);
  - the Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2006, (SSI 2006/335);
  - the Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006, (SSI 2006/337); and
  - the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006, (SSI 2006/341).
3. **Proposed Aquaculture and Fisheries (Scotland) Bill:** The Committee will consider its approach at Stage 1, should the proposed bill be referred to it as lead committee. The Committee will also decide whether to consider a detailed evidence programme in private at its next meeting.
4. **Crofting Reform etc. Bill (in private):** The Committee will consider a draft Stage 1 report.

The following papers are attached:

<u>Agenda Item 1</u>	
Paper from the Clerk	ERD/S2/06/23/1a
<u>Agenda Item 2</u>	
<a href="#">The Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2006, (SSI 2006/311)</a>	ERD/S2/06/23/2a
<a href="#">The Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006, (SSI 2006/313)</a>	ERD/S2/06/23/2b
<a href="#">The Plant Health (Potatoes) (Scotland) Order 2006, (SSI 2006/319)</a>	ERD/S2/06/23/2c
The Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2006, (SSI 2006/335)	ERD/S2/06/23/2d
Extract from the Subordinate Legislation Committee's 30th Report, 2006	ERD/S2/06/23/2e
The Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006, (SSI 2006/337)	ERD/S2/06/23/2f
The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006, (SSI 2006/341)	ERD/S2/06/23/2g
<u>Agenda Item 3</u>	
Paper from the Clerk [ <i>Members only</i> ]	ERD/S2/06/23/3a
<u>Agenda Item 4</u>	
Draft report [ <i>Members only</i> ]	ERD/S2/06/23/4a

**Environment and Rural Development Committee**

**PE807 – INFLUENCE OF SUPERMARKETS IN THE FOOD CHAIN**

**Note by the Clerk**

1. The Public Petitions Committee (PPC) has referred PE807 to the Committee. The petition, by James Mackie, calls for the Parliament to urge the Scottish Executive to conduct an inquiry into the influence of supermarkets in the food chain, and to examine in particular safety issues arising from the use of chemicals to extend the shelf life of products and from central purchase and distribution and the impact of supermarket trading on local economies and small producers.

**Background**

2. The petitioner states that the Scottish food chain is controlled by supermarkets which hold a monopoly in the supply of food stuffs and other goods. The petitioner argues that this has resulted in the closure of small retail companies and commercial and agricultural suppliers which has had a major effect on employment and sustainability, especially in rural areas. The central buying and distribution practices of supermarkets remove the opportunities for local purchase and supply and increases the time from harvest to display which, in turn, requires an increase in the use of preservation methods to improve shelf life.

**Progress of the petition**

3. The petition was lodged with the PPC in January 2005. At its meeting on 20 April 2005, that Committee agreed to undertake a preliminary examination of the issues and wrote to the Scottish Executive, the Office of Fair Trading, the Food Standards Agency, the Scottish Consumer Council, the NFU Scotland, Friends of the Earth Scotland and the Institute of Grocery Distribution.
4. At its meeting on 19 April 2006, the PPC agreed to refer the petition to the Environment and Rural Development Committee to consider in connection with its inquiry into the food supply chain.
5. A copy of the petition and relevant correspondence is attached at **Annex A**.

**Current developments**

6. The remit of the Committee's inquiry into the food supply chain included an examination of most of the main issues raised by the petitioner. The Committee published that report on 12 June. A formal

response from the Executive is expected by mid-August, and the Committee has also made a bid for an opportunity for the Parliament to debate the report in the Chamber.

7. During the course of the inquiry, the Office of Fair Trading referred the grocery market to the Competition Commission for a full investigation. As the Committee's findings on the food supply chain are relevant to that inquiry, the report has been submitted to the Commission as evidence. It has also been sent to the Secretary of State for Environment, Food and Rural Affairs and the Minister with responsibility for competition issues at the Department of Trade and Industry.
8. The Committee may consider that all the concerns raised by the petitioner have been fully explored both through the correspondence sought by the PPC and in the Committee's food supply chain inquiry. If so, the Committee may wish to note and formally conclude the petition on this basis. A copy of the Committee's report, the Executive's response to the report in due course, and details of the Competition Commission's current inquiry into the grocery market could be forwarded to the petitioner for his information.
9. The issue of alleged increased use of preservatives in order to lengthen the shelf life of food was not specifically addressed as part of the Environment and Rural Development Committee's inquiry. The petitioner appears to raise this issue in connection with centralisation of distribution and supply networks.
10. However, if the Committee considers that this aspect of the petition merits separate investigation, the Committee may wish to refer the petition back to the PPC with a recommendation that it be referred to the Health Committee for further consideration of this particular element. Food standards and safety and public health fall within the remit of the Health Committee.
- 11. The Committee is invited to consider how it wishes to deal with this petition.**

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2006, (SSI 2006/311)					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to take account of the relevant changes in EC legislation for the production and marketing of wine and related products.					

<b>Laid Date</b>	8 <sup>th</sup> June 2006	<b>20 day date</b>	28 <sup>th</sup> June 2006
<b>1<sup>st</sup> SLC Meeting</b>	13 <sup>th</sup> June 2006	<b>40 day date</b>	20 <sup>th</sup> September 2006
<b>Lead Committee Report Due</b>	11 <sup>th</sup> September 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Elaine McGregor, 46272
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>				
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006, (SSI 2006/313)					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to consolidate the Seeds (Registration, Licensing and Enforcement) Regulations 1985 and to implement European Council Directive 2004/117/EC.					

<b>Laid Date</b>	8 <sup>th</sup> June 2006	<b>20 day date</b>	28 <sup>th</sup> June 2006
<b>1<sup>st</sup> SLC Meeting</b>	13 <sup>th</sup> June 2006	<b>40 day date</b>	20 <sup>th</sup> September 2006
<b>Lead Committee Report Due</b>	11 <sup>th</sup> September 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Anne Watson, 44451
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Plant Health (Potatoes) (Scotland) Order 2006, (SSI 2006/319)						
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development						
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		<b>Other</b>	NL		NP	
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>				
<b>Purpose of Instrument</b>	The purpose of this instrument is to make provision for the notification of potato crops, the destruction of the haulm of infected crops and for the treatment of areas where waste potato material is kept.						

<b>Laid Date</b>	8 <sup>th</sup> June 2006	<b>20 day date</b>	28 <sup>th</sup> June 2006
<b>1<sup>st</sup> SLC Meeting</b>	13 <sup>th</sup> June 2006	<b>40 day date</b>	20 <sup>th</sup> September 2006
<b>Lead Committee Report Due</b>	11 <sup>th</sup> September 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Bob King, 44895
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>				
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2006, <b>(SSI 2006/335)</b>					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to set out standards that captive bird quarantine premises have to meet and give powers for immediate review and inspection of previously approved premises to assess their compliance with the requirements of the EU legislation.					

<b>Laid Date</b>	8 <sup>th</sup> June 2006	<b>20 day date</b>	28 <sup>th</sup> June 2006
<b>1<sup>st</sup> SLC Meeting</b>	13 <sup>th</sup> June 2006	<b>40 day date</b>	20 <sup>th</sup> September 2006
<b>Lead Committee Report Due</b>	11 <sup>th</sup> September 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Karen Lindsay, 46178
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>		<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								



**Subordinate Legislation Committee**  
**Extract from 30<sup>th</sup> Report, 2006 (Session 2)**

The Committee reports to the Parliament as follows—

**The Common Agricultural Policy (Wine) (Scotland) Amendment  
Regulations 2006, (SSI 2006/311)**

1. The Committee asked the Executive 4 questions on this instrument.

**Point 1**

2. The Committee asked whether the omission of a reference to the further amendment to Regulation 1622/2000 (Commission Regulation (EC) No. 0643/2006, (O.J. No. L 115, 28.04.06, p.6) is deliberate.

3. In its response at Appendix 4, the Executive agreed with the Committee that there have been further Community amendments to Regulation 1622/2000 which have not been included in the Regulations, explaining that this was an oversight. The Executive indicated that it would update the definition of Regulation 1622/2000 at the next legislative opportunity.

**Point 2**

4. The Committee asked with reference to the amendment made to Schedule 5 of the principal Regulations by regulation 12, where the first 2 entries already seem to be included in the Schedule. A similar point arises in relation to the references to Council Regulations 3205/1993 and 2329/1998 inserted into Schedule 7 by regulation 14.

5. In its response, the Executive agreed that these entries are duplications, explaining these were inserted in error. It confirmed that the error will be corrected before the instrument goes for printing.

**Point 3**

6. The Committee asked the Executive to explain the references to Regulations 1574/2002 and 0715/2003 in Schedule 11 inserted by regulation 17, as these Regulations appear no longer to be in force.

7. In its response, the Executive admitted that it was not aware that these amendments were no longer in force. It confirmed that they will delete the references to these Regulations when the principal Regulations are next amended.

#### **Point 4**

8. The Committee asked in relation to Schedule 12 as inserted by regulation 17, and whether the omission of the most recent amendments (Commission Regulation (EC) No. 261/2006, O.J. No. L 046, 16.02.06, p.18, and the Corrigendum at O.J. No. L 272, 23.10.03, p.38) is deliberate.

9. In its response, the Executive agrees that there have been further Community amendments to Regulation 753/2002 which have not been included in the Regulations. This was an oversight. The Executive will update the definition at the next legislative opportunity.

**10. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting on all four points, as acknowledged by the Executive; and that the Executive intends to correct the errors on points 1,3 and 4 by amending instruments at the next legislative opportunity; and on point 2 prior to printing.**

#### **The Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006, (SSI 2006/313)**

11. The Committee asked the Executive 2 questions.

12. Firstly, it asked why Council Directive 2004/117/EC was being implemented later than the date specified in the Directive, namely 1 October 2005.

13. The Executive, in its response printed in Appendix 5, explains that because implementation of the Directive is being achieved through a substantially larger legislative exercise than simply the making of the Regulations, it has not been possible to fully transpose it prior to its final implementation date. However the measures necessary to implement the Directive were substantially in place prior to 1 October 2005.

**14. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that information was requested from and supplied by the Executive.**

15. Secondly, the Committee asked why no Transposition Note was submitted with this instrument.

16. The Executive, in its response, explains that as the Regulations are basically a consolidation of previous regulations no Transposition Note was produced. On reflection however, particularly given that the Regulations do implement a small number of new matters arising from the Directive, the Executive considers that it may have been useful to produce a Transposition Note.

**17. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that there was no Transposition Note, which would have been particularly useful in this instance, as acknowledged by the Executive.**

## **The Plant Health (Potatoes) (Scotland) Order 2006, (SSI 2006/319)**

18. The Committee asked the Executive 8 questions on this instrument.

### **Point 1**

19. The Committee asked the Executive for an explanation of the purpose of and *vires* for the words “without payment” in articles 4(2) and 5(3), given section 4(2) of the parent Act (which makes provision in relation to the payment of compensation).

20. The Executive, in its response at Appendix 7, states that article 4(2) provides that “*The Minister...may pay compensation in respect of any crop or any seed, plant or part thereof, which is removed or destroyed by or under the instructions of an inspector authorised by him*”. The Act is, in this respect, permissive in relation to the provision of compensation. In this instance the Order makes it clear that in the case of affected crops identified under Article 4, only the required samples of potato will be removed, and under article 5 again samples of waste potato material are removed. The purpose of stating that samples will be removed without payment is to ensure that there is certainty in the industry that *de minimis* claims in respect of removal of a minute proportion of a potato crop under Article 4 should not be made; and in respect of article 5 the waste material has by definition no intrinsic value. The provision, according to the Executive, therefore avoids any doubt of any prospect of compensation due to the quantity or nature of the samples being taken.

21. The Committee had some difficulty in following the Executive’s reasoning. It agrees that section 4(2) of the Act is permissive but this does not affect the question of whether the provisions in the Order are validly made. It is accepted that the order-making powers in the Act are very wide but even so, the Committee notes that it is a general rule that where an Act itself makes provision for certain matters it is not open to an instrument made under the Act to add a gloss to that provision unless there is clear indication to the contrary. There is no such authority in the Act.

22. As section 4(2) is permissive, the Committee is of the view that there is no need for the inclusion of the words “without payment” and, in adding to the provisions of section 4(2) of the Act, the words could be said to be of doubtful *vires*.

**23. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that there is a doubt as to whether the provision is *intra vires*.**

### **Point 2**

24. The Committee asked the Executive for an explanation of the purpose and effect of the words “in acting under...” in articles 5(3) and 4(2); and to explain with reference to article 5(3) how an inspector could be said to be “acting under” article 5(2).

25. In its response, the Executive explains that the purpose of the words “*In acting under*” is to convey the inference that an inspector may enter onto premises under paragraph (1) with the sole and express intention of carrying out an inspection of waste potato material; and as a result of that may request under (2) that the potato grower or occupier complies with a request to identify an area where waste potato material is being kept.

26. The Executive adds that the use of “*In acting under (1) or (2)*” is intended to provide for an alternative situation where the inspector has entered premises for another stated purpose, but whilst there sees an area which appears to him to be an area of waste potato material and in that case asks for this to be identified. The form of wording then permits the inspector to remove a sample for testing in both scenarios and prevents any inference that a sample could only be removed validly in a case under paragraph (1) where the principal purpose of the inspection was to identify an area of waste potato material and take samples.

27. The Committee found the Executive’s response difficult to understand. In article 4(2) it is unable to understand the purpose of the words “in acting under paragraph (1)” since paragraph (1) of that article confers a power of entry for certain purposes. In its view, the words “in acting under” in context add nothing to this. The Committee considers that the words “In acting under paragraph (1)” in article 4(2) are both unnecessary and confusing with the result that at best the provision fails to follow proper legislative practice. Indeed, the Committee also considers that the provision is defectively drafted.

**28. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting on this point.**

29. As regards the words “*in acting under paragraph (1) and (2)*” that appear in article 5(2) the Committee considers that the position is even more confused. The same arguments apply as regards the reference to paragraph (1) of article 5(3) as arise in relation to the reference to paragraph (1) in article 4(2). The Committee considers that the words serve no useful purpose and have no place in a legislative instrument.

30. The Committee considers that the reference in article 5(3) to paragraph (2) is wrong. Paragraph (2) provides-

“A potato grower or occupier of the premises shall comply with a request by an inspector to identify where any waste potato material is kept”.

31. It is the Committee's view that an inspector does not act under this paragraph, and that any action is taken by a potato grower. The reference in paragraph (3) of article 5 therefore does not appear to the Committee to make sense.

**32. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that article 5(3) is defectively drafted.**

### **Point 3**

33. The Committee asked the Executive to explain, with reference to article 6, why paragraph (1) is stated to be subject to paragraphs (2), (3) and (4).

34. In its response, the Executive states that article 6(1) is stated to be “*subject to*” paragraphs (2) (3) and (4) as these succeeding paragraphs qualify the nature of the written notice, and ensures that there is a uniformity in relation to notices initially made in writing and those made orally but followed up in writing.

35. The Committee finds the response unhelpful. Paragraph 6(1) specifies the form that a notice can take (that is written or oral). The Committee notes that the remaining provisions of that article specify the method of serving the notice. These provisions do not in any way qualify the form that a notice may take perhaps for example by providing in certain circumstances that a notice cannot be given orally.

**36. The Committee draws the attention of the lead Committee and the parliament to this instrument on the grounds of defective drafting of regulation 6(1).**

### **Point 4**

37. The Committee also asked the Executive with reference to article 6(1), to explain the wording of sub-paragraph (b) with particular reference to the words “*such notice*” which appear to refer to the notice in the introductory words of paragraph (1); the Committee wondered whether it was the intention that every notice should be confirmed in writing which seems to be what the provision requires.

38. The Executive, in its response, explains that the wording of sub-paragraph (b) of article 6(1) is intended to ensure that notices may be given orally, initially. The reference to “*such notice*” is in the same sentence as the reference to oral notice to ensure that the reader knows that oral notices are to be confirmed in writing.

39. Whilst the Executive has explained the purpose of the words in question, but unfortunately the word “notice” is used only in the initial full out to paragraph (1) of article 6. Accordingly “*such notice*” can only refer to “a notice under this Order” that is either a notice given in writing or a notice given orally. While with careful attention the reader could probably arrive at the intended meaning, the Committee considers that it would have helped if, for example, the words “if given orally” had been inserted between “and” and “shall” in subparagraph (b). As it stands the provision is defectively drafted.

**40. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting.**

### **Point 5**

41. The Committee asked the Executive with reference to article 8, why paragraph (1) is stated to be “without prejudice to articles 6 and 7”. It was not clear to the Committee how article 8 could prejudice these articles.

42. The Executive, in its response, replies that the reference to “*without prejudice to*” is intended to ensure that there is no prejudice from the actions which may be taken by an inspector to the actions which may be required by an inspector in the preceding articles.

43. The Committee again found the Executive’s response unhelpful. Article 6 provides for the service of a notice. Article 7 obliges a person on whom a notice is served to inform an inspector if so required whether the notice has been complied with and of the steps taken to comply with the notice. Article 8 makes provision for the circumstances where a person has failed to comply with a notice. It is clear to the Committee therefore that article 8 cannot prejudice articles 6 or 7.

**44. The Committee draws the attention of the lead Committee and the parliament to this instrument on the grounds of defective drafting in relation to article 6(1).**

#### **Point 6**

45. The Committee asked the Executive why the power in article 9 to apply to the court for a warrant does not also extend to the powers of entry in article 8.

46. In its response, the Executive acknowledges the omission and has undertaken to make an appropriate amendment in due course.

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

#### **Point 7**

48. The Committee asked the Executive with reference to article 10(1)(a)(ii), how this will apply in relation to paragraphs (1),(4) and (5) of article 5.

49. The Executive, in its response, replies that the reference to the whole of article 5 in the offence provision is within article 5(2) and that the reference to article 5 catches this.

50. The Committee also found this response difficult to understand. Paragraphs (1) and (3) and (4) of article 5 impose duties on an inspector. The effect of article 10(1)(a)(ii) is to make a failure to comply with these paragraphs a criminal offence. The Committee does not believe that this is the intention. Paragraph (2) of article 5 does impose a duty on a potato grower to comply with a request by an inspector, but there is no need for the other provisions of article 5 to be incorporated to establish the criminal offence and indeed to do so has an unfortunate result indicated above.

**51. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds of defective drafting.**

#### **Point 8**

52. The Committee asked the Executive to explain the meaning of paragraph (7) of article 10 as drafted. It asked if it is the intention that section 136(3) should

apply for the purposes of section 3(5) of the parent Act in relation to prosecutions for offences against the Order.

53. The Executive, in its response, maintains that the inclusion of this provision is necessary to ensure that prosecutions are raised timeously. The requirement under the parent Act is for proceedings to be raised within a twelve month period but in relation to proceedings in Scotland the Criminal Procedure (Scotland) Act clarifies the timescale within which offences under summary proceedings must be commenced. The paragraph mirrors the similar provision in the principal Plant Health (Scotland) Order (SSI 2005/613) of 2005 which refers specifically to the relevant criminal statute to ensure that the relevant timescales are adhered to.

54. The Committee notes that the parent Act extends the statutory time limit for the bringing of proceedings for an offence under the Order from 6 months to 12 months from the date of the offence. The reason for attracting section 136(3) of the 1995 Act in the Committee's view however is to define the date when proceedings commence for the purposes of section 3(5) of the parent Act (the date when warrant to apprehend or to cite an accused is granted).

55. The Committee considers that it could be argued that in adding to a provision of the Act this paragraph is of doubtful *vires*. However in this case it takes the view that the provision is a permissible clarification. It does however consider that the drafting of paragraph (7) of article 10 could be improved and that the provision is required for the purposes of section 3(5) of the Act not article 10.

**56. The Committee draws the attention of the lead Committee and the Parliament to this instrument on the grounds that its meaning could be clearer.**

**The Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2006, (SSI 2006/335)**

57. The Committee asked the Executive whether in new regulation 18 substituted by regulation 3(2), the reference should be to Article 2.3 of Commission Decision 2000/666/EC rather than to Article 2.4.

58. The Executive, in its response at Appendix 10, explains that it considers that the reference to Article 2.4 of the Commission Decision in new regulation 18(3)(a) is relevant, as it provides that the importer shall provide details of the quarantine facility or centre to which the birds will be conveyed on leaving the border inspection post and proof that the facility or centre will accept the birds.

59. The Executive does not consider that reference to Article 2.3 of the Commission Decision in regulation 18(3)(a) would be appropriate as this provision specifically deals with the importation of birds and not the conveyance of birds, after importation, from the border inspection post to the quarantine facility or centre.

60. The Committee noted that Articles 2.3 and 2.4 of the Commission Decision provides as follows-

“Member States shall authorise the import of birds from countries listed in Annex D to this Decision only if:

3. they are transported in cages or crates which are individually identified with the identification number that must correspond with the identification number indicated on the animal health certificate;
4. the importer can prove at the border inspection post that an approved quarantine facility or centre will accept the birds. The written proof shall contain the name and address of the approved facility issued by an official designated by the competent authority”.

61. Article 3 of the Decision imposes further requirements on the transport of birds from a border inspection post to the quarantine premises.

62. New regulation 18(3)(a) provides-

“(3) in relation to captive birds, the importer or his agent shall at the expense of the importer ensure that –

(a) the bird is conveyed from the border inspection post referred to in paragraph (2) to an approved quarantine facility or quarantine centre as provided for in Articles 2(4) and 3(1) and (2) of Commission Decision 2006/666/EC;”.

63. The Committee is not entirely convinced by the Executive’s response. It agrees that Article 2 deals with transport of birds before they reach the border inspection post; and that Article 3 deals with transport from the inspection post to the quarantine premises. It therefore does not follow the Executive’s distinction between the relevance of Article 2.3 and Article 2.4 for the purposes of regulation 18(3).

64. If it is accepted that Article 2.3 is not relevant for the purposes of regulation 18(3) on the grounds that the conditions only apply before importation then the Committee cannot see that Article 2.4 is relevant as it applies only at the point of importation and does not appear to impose any obligations relating to transportation: the only provision relating to transportation in Article 2 being in its opinion paragraph 3 of that Article.

65. The Committee adds that the reference in regulation 18(3)(a) to Article 3.2 of the Decision also seems strange since that Article places obligations on the official responsible for the border inspection post, yet regulation 18(3)(a) appears to place the duty on the importer or his agent.

**66. The Committee, while not entirely convinced by the drafting of regulation 18(3)(a), concedes that the point is arguable, and is therefore prepared to accept the Executive’s arguments, though the meaning of the provision could be clearer.**



## **APPENDIX 4**

### **The Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2006, (SSI 2006/311)**

1. On 13 June 2006 the Committee asked the Executive for an explanation of the following matters.

(a) the Executive is asked, with reference to regulation 11 whether the omission of a reference to the further amendment to Regulation 1622/2000 (Commission Regulation (EC) No. 0643/2006, (O.J. No. L 115, 28.04.06, p.6) is deliberate;

(b) the Executive is asked, with reference to the amendment made to Schedule 5 of the principal Regulations by regulation 12 to explain the first 2 entries which seem already to be included in the Schedule. A similar point arises in relation to the references to Council Regulations 3205/1993 and 2329/1998 inserted into Schedule 7 by regulation 14;

(c) the Executive is asked to explain the references to Regulations 1574/2002 and 0715/2003, in Schedule 11 inserted by regulation 17 as these Regulations appear no longer to be in force; and

(d) the Executive is asked, in relation to Schedule 12 as inserted by regulation 17, whether the omission of the most recent amendments (Commission Regulation (EC) No. 261/2006, O.J. No. L. 046, 16.02.06, p.18, and the Corrigendum at O.J. No. L 272, 23.10.03, p.38 is deliberate.

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

#### **First question**

2. We agree with the Committee that there have been further Community amendments to Regulation 1622/2000 which have not been included in the Regulations. This was an oversight. The amendment to Regulation 1622/2000 is a de-restrictive measure and does not therefore need any enforcement action. We will update the definition of Regulation 1622/2000 at the next legislative opportunity.

#### **Second question**

3. The Executive is grateful to the Committee for drawing these duplication of entries to their attention. They were inserted in error and will be corrected before the instrument goes for printing.

#### **Third question**

4. We note the references to Commission Regulations 1574/2002 and 0715/2003. We were aware that these Regulations had not been expressly repealed but not aware these amendments were no longer in force. We will delete

the references to these Regulations when the principal Regulations are next amended.

#### **Fourth question**

5. We agree with the Committee that there have been further Community amendments to Regulation 753/2002 which have not been included in the Regulations. Again, this was an oversight. The amendment to Regulation 753/2002 is also a de-restrictive measure and does not therefore need any offensive enforcement action. We will update the definition of Regulation 753/2002 at the next legislative opportunity.

## **APPENDIX 5**

### **The Seed (Registration, Licensing and Enforcement) (Scotland) Regulations 2006, (SSI 2006/313)**

1. On 13 June 2006 the Subordinate Legislation Committee requested an explanation of the following matters-

(a) why Council Directive 2004/117/EC is being implemented later than the date specified in the Directive, namely 1 October 2005; and

(b) why no Transposition Note was submitted with this instrument.

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

2. The Scottish Executive is in the process of a substantial consolidation of the secondary legislation governing seed marketing and certification in Scotland, a process that commenced in 2004. As part of that consolidation exercise, the Seed (Registration, Licensing & Enforcement) (Scotland) Regulations 2006 (S.S.I. 2006/313) ("the Regulations") essentially consolidate the Seeds (Registration, Licensing and Enforcement) Regulations 1985 (S.I. 1985/980). Council Directive 2004/117/EC ("the Directive") covers the carrying out of certain seed certification activities under licence and also the matter of equivalence of seed produced in third countries. It makes permanent the terms of a temporary experiment on the use of licensed personnel (Commission Decision 98/320/EC (seed sampling and seed testing) and Council Directive 98/96/EC (crop inspections)), hence the fact that much of its content has previously been implemented. The measures necessary to implement the Directive were substantially in place prior to 1 October 2005 through a combination of the 1985 Regulations and the seed marketing regulations, in particular the Oil and Fibre Plant Seed (Scotland) Regulations 2004 (S.S.I. 2004/317), the Cereal Seed (Scotland) Regulations 2005 (S.S.I. 2005/328) and the Fodder Plant Seed (Scotland) Regulations 2005 (S.S.I. 2005/329). As implementation of the Directive is being achieved through a substantially larger legislative exercise than simply the making of the Regulations, it has not been possible to fully transpose it prior to its final implementation date.

3. The Executive appreciates that the Committee finds transposition notes useful and has had a recent practice of producing these in relation to the implementation of Directives. As the Regulations are basically a consolidation of previous regulations and indeed the Directive is essentially the permanent version of a temporary experiment on the use of licensed personnel in seed certification, no transposition note was produced. On reflection, particularly given that the Regulations do implement a small number of new matters arising from the Directive, the Executive considers that it may have been useful to produce a transposition note.

## APPENDIX 7

### **The Plant Health (Potatoes) (Scotland) Order 2006, (SSI 2006/319)**

1. On 13 June 2006, the Subordinate Legislation Committee, having considered the above instrument, sought an explanation of the following matters:-

(a) for an explanation of the purpose of and vires for the words “without payment” in articles 4(2) and 5(3) given section 4(2) of the parent Act;

(b) for an explanation of the purpose and effect of the words “in acting under...” in articles 5(3) and 4(2); and to explain with reference to article 5(3) how an inspector could be said to be “acting under” article 5(2);

(c) with reference to article 6 why paragraph (1) is stated to be subject to paragraphs (2), (3) and (4);

(d) again with reference to article 6(1), to explain the wording of sub-paragraph (b) with particular reference to the words “such notice” which appear to refer to the notice in the introductory words of paragraph (1): is it the intention that every notice be confirmed in writing which seem to be what the provision requires;

(e) with reference to article 8, why paragraph (1) is stated to be “without prejudice to articles 6 and 7”. It is not clear how article 8 could prejudice these articles;

(f) why the power in article 9 to apply to the court for a warrant does not also extend to the powers of entry in article 8;

(g) with reference to article 10(1)(a)(ii), how this will apply in relation to paragraphs (1), (4) and (5) of article 5; and

(h) to explain the meaning as drafted of paragraph (7) of article 10. Is the intention that section 136(3) should apply for the purposes of section 3(5) of the parent Act in relation to prosecutions for offences against the Order?

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

2. The Executive welcomes the opportunity to provide clarification in relation to the matters raised in the Committee’s letter.

3. The principal Act provides at 4 (2) that “*The Minister...may pay compensation in respect of any crop or any seed, plant or part thereof, which is removed or destroyed by or under the instructions of an inspector authorised by him*”. The Act is in this respect permissive in relation to the provision of compensation and in this instance the Order makes it clear that in the case of affected crops identified under Article 4 only the required samples of potato will be removed and under article 5 again samples of waste potato material are removed. The purpose of stating that samples will be removed without payment is to ensure that there is certainty in the

industry that *de minimis* claims in respect of removal of a minute proportion of a potato crop under Article 4 should not be made and in respect of article 5 the waste material has by definition no intrinsic value. The provision therefore avoids any doubt of any prospect of compensation due to the quantity or nature of the samples being taken.

4. The purpose of the words “*In acting under*” is to convey the inference that an inspector may enter onto premises under paragraph (1) with the sole and express intention of carrying out an inspection of waste potato material and as a result of that may request under (2) that the potato grower or occupier complies with a request to identify an area where waste potato material is being kept. The use of “*In acting under (1) or (2)*” is intended to provide for an alternative situation where the inspector has entered premises for another stated purpose but whilst there sees an area which appears to him to be an area of waste potato material and in that case asks for this to be identified. The form of wording then permits the inspector to remove a sample for testing in both scenarios and prevents any inference that a sample could only be removed validly in a case under paragraph (1) where the principal purpose of the inspection was to identify an area of waste potato material and take samples.

5. Article 6 (1) is stated to be “*subject to*” paragraphs (2) (3) and (4) as these succeeding paragraphs qualify the nature of the written notice and ensures that there is a uniformity in relation to notices initially made in writing and those made orally but followed up in writing.

6. The wording of Sub-paragraph (b) of article 6(1) is intended to ensure that notices may be given orally, initially. The reference to “*such notice*” is in the same sentence as the reference to oral notice to ensure that the reader knows that oral notices are to be confirmed in writing.

7. The reference to “*without prejudice to*” is intended to ensure that there is no prejudice from the actions which may be taken by an inspector to the actions which may be required by an inspector in the preceding articles.

8. I am grateful to the Committee for pointing this out and confirm that the matter will be dealt with in future where any amending instrument is made.

9. The reference to the whole of article 5 in the offence provision is within article 5(2) and the reference to article 5 catches this.

10. The inclusion of this provision is necessary to ensure that prosecutions are raised timeously. The requirement under the parent Act is for proceedings to be raised within a twelve month period but in relation to proceedings in Scotland the Criminal Procedure (Scotland) Act clarifies the timescale within which offences under summary proceedings must be commenced. The paragraph mirrors the similar provision in the principal Plant Health (Scotland) Order (SSI 2005/613) of 2005 which refers specifically to the relevant criminal statute to ensure that the relevant timescales are adhered to.

## **APPENDIX 10**

### **The Animals and Animal Products (Import and Export) (Scotland) Amendment Regulations 2006, (SSI 2006/335)**

1. On 13<sup>th</sup> June 2006 the Subordinate Legislation Committee considered the above instrument and sought an explanation of the following matter:-

“whether in new regulation 18 substituted by regulation 3(2) the reference should be to Article 2.3 of the Commission Decision, rather than to Article 2.4.”

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

2. The Executive is grateful to the Committee for raising this point and allowing it to clarify this matter. The Executive considers that the reference to Article 2.4 of the Commission Decision in new regulation 18(3)(a) is relevant as it provides that the importer shall provide details of the quarantine facility or centre to which the birds will be conveyed on leaving the border inspection post and proof that the facility or centre will accept the birds. The Executive does not consider that reference to Article 2.3 of the Commission Decision in regulation 18(3)(a) would be appropriate as this provision specifically deals with the importation of birds and not the conveyance of birds, after importation, from the border inspection post to the quarantine facility or centre.

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Avian Influenza (Slaughter and Vaccination) (Scotland) Regulations 2006, (SSI 2006/337)					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to make an explicit duty to slaughter poultry and other birds on infected premises and those judged following a veterinary inquiry to be dangerous contacts. It also provides powers to vaccinate birds in line with the EU Avian Influenza Directive 2005/94/EC and sets the framework for how these powers would be used.					

<b>Laid Date</b>	8 <sup>th</sup> June 2006	<b>20 day date</b>	28 <sup>th</sup> June 2006
<b>1<sup>st</sup> SLC Meeting</b>	20 <sup>th</sup> June 2006	<b>40 day date</b>	20 <sup>th</sup> September 2006
<b>Lead Committee Report Due</b>	11 <sup>th</sup> September 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Neil Ritchie, 40533
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>	✓	<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								

**SSI DESIGNATION FORM**

<b>SSI Title &amp; No:</b>	The Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2006, (SSI 2006/341)					
<b>Responsible Minister</b>	Ross Finnie, Minister for Environment and Rural Development					
<b>Standing Order</b>	<b>Affirmative</b>	10.6.1(a)		<b>Negative</b>	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		<b>Other</b>	NL		NP
<b>Lead Committee</b>	Environment and Rural Development		<b>Other Committee</b>			
<b>Purpose of Instrument</b>	The purpose of this instrument is to allow the enforcement of Council Regulation 51/2006 restricting days at sea by Scottish fishing vessels in certain areas of the sea around Britain. It also provides for the enforcement of the monitoring, inspection and surveillance provisions set out in Council Regulation 423/2004.					

<b>Laid Date</b>	8 <sup>th</sup> June 2006	<b>20 day date</b>	28 <sup>th</sup> June 2006
<b>1<sup>st</sup> SLC Meeting</b>	20 <sup>th</sup> June 2006	<b>40 day date</b>	20 <sup>th</sup> September 2006
<b>Lead Committee Report Due</b>	11 <sup>th</sup> September 2006	<b>Other Committee Report Due</b>	

<b>SE Contact</b>	Simon Coote, 405323
<b>Committee Contact</b>	Mark Brough, 85240

**For SLC use:**

<b>Article 10 Compliance</b>	<b>Breaks 10(1) rule</b>		<b>Breaks 10(2) rule</b>		<b>PO Letter dated</b>		<b>PO Letter received</b>	
<b>Revocations</b>	<b>Revokes</b>	<b>See Purpose of Instrument</b>		<b>Partially Revokes</b>				
<b>Executive Note</b>	✓	<b>Regulatory Impact Assessment</b>	✓	<b>European Regulations/ Directives</b>	✓			
<b>Additional Information</b>								