



**ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE**

**AGENDA**

**14<sup>th</sup> Meeting, 2003 (Session 2)**

**Wednesday 3 December 2003**

The Committee will meet at 10.00 am in Committee Room 3.

1. **Subordinate legislation:** The Committee will consider the following negative instruments—
  - The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003, (SSI 2003/531)
  - The Environmental Protection (Duty of Care) Amendment (Scotland) Regulations 2003, (SSI 2003/533)
  - The Air Quality Limit Values (Scotland) Amendment Regulations 2003, (SSI 2003/547).
2. **European issues:** The Committee will consider an update from the Convener on European issues.
3. **Nature Conservation (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

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Clerk to the Committee  
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The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>Extract from the Subordinate Legislation Committee's 13th Report</p> <p><a href="#">The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003, (SSI 2003/531)</a></p> <p><a href="#">The Environmental Protection (Duty of Care) Amendment (Scotland) Regulations 2003, (SSI 2003/533)</a></p> <p><a href="#">The Air Quality Limit Values (Scotland) Amendment Regulations 2003, (SSI 2003/547)</a></p>	<p><a href="#">ERD/S2/03/14/1a</a></p> <p>ERD/S2/03/14/1b</p> <p>ERD/S2/03/14/1c</p> <p>ERD/S2/03/14/1d</p>
<p><u>Agenda Item 2</u></p> <p>A paper from the Convener is attached</p>	<p><a href="#">ERD/S2/03/14/2a</a></p>
<p><u>Agenda Item 3</u></p> <p>Draft Stage 1 Report on the Nature Conservation (Scotland) Bill <i>(for members only)</i></p> <p>Report from the Subordinate Legislation Committee on the Nature Conservation (Scotland) Bill <i>(to follow)</i></p>	<p>ERD/S2/03/14/3a</p> <p>ERD/S2/03/14/3b</p>

**Subordinate Legislation Committee  
Extract of 13<sup>th</sup> Report, 2003**

1. At its meeting on 25<sup>th</sup> November the Committee determined that it did not need to draw the attention of the Parliament to the instruments listed in the Annexe to this report on any of the grounds in its remit.
2. The report is also addressed to the following committees as the lead committees for the instruments specified:

Environment and Rural Development (SSI 2003/531)

**Instruments subject to annulment**

The Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 (**SSI 2003/531**)

*Background*

1. The Committee referred three comments on this instrument to the Executive.

*Question 1*

2. The Executive was requested to confirm that the reference in regulation 12 to the 1999 Regulations is correct.

*Answer 1*

3. The Executive accepts that the reference in regulation 12 to the 1999 Regulations is, unfortunately, an error. The reference should have been to the 1991 Regulations. There are no 1999 Regulations and therefore that reference requires to be treated as if it were not there. The 2001 Regulations have, however, been correctly revoked and those Regulations are the means by which provisions of the 1991 Regulations were, by savings provision, retained in force. Since that savings provision is now revoked with the rest of the 2001 Regulations, the practical outcome is the same. However, when the opportunity next arises we will formally revoke the 1991 Regulations. The Executive's reply is reproduced at Appendix 2.

*Report 1*

4. The Executive has conceded that the Regulations are defectively drafted in the above respect. The Committee is inclined to agree with the Executive's analysis of the legal position. In addition, any doubt about the text of the instrument is resolved by the footnote, which is correct. Accordingly, the Committee is inclined to agree with the Executive that the error should not affect the interpretation of the Regulations.

5. **The Committee therefore simply draws the attention of the lead committee and the Parliament to the instrument on the grounds of defective drafting acknowledged by the Executive.**

*Question 2*

6. The Committee asked for an explanation of the meaning of the words “the present Regulations” in the full out after sub-paragraph (c) in regulation 1(3) on page 2.

*Answer 2*

7. The expression is intended to refer to the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 in its entirety so far as relevant to that reference in regulation 1(3). The Executive is of the view that it is clear from the context of the words that they have that meaning and that it would be difficult to see any other meaning which could be taken. However, it is noted that the expression in fact reads “the present Regulation”. This is a clerical error. Although it is assumed that the meaning is clear in the context the Executive is exploring the issuing of a correction which will be widely circulated.

*Report 2*

8. Again, the Executive has acknowledged that the instrument is defectively drafted. The Committee agrees, however, that the error is very minor and the wording would probably be interpreted in the way suggested by the Executive. **The Committee therefore reports the instrument on the ground of defective drafting, albeit minor, in this respect.**

*Question 3*

9. The Committee also observed that the Executive has chosen not to revoke amending instruments in addition to the principal Regulations. Both the 1991 Regulations and the 2001 Regulations were amended by other Regulations and, although it is not strictly necessary in legal terms, it is generally regarded as good practice to “clear the statute book” whenever possible. The Executive was therefore asked for its comments on the matter.

*Answer 3*

10. The Executive notes the Committee’s view that it would be good practice to “clear the statute book” and revoke the provisions which amended the 1991 Regulations and the 2001 Regulations as well as those Regulations themselves. The Executive accepts that point and will take the next legislative opportunity to do so.

*Report 3*

11. This is a very minor point of drafting practice and does not in any way affect the interpretation of the instrument. **The Committee reports the Regulations simply on the grounds that they fail to comply with proper legislative practice in this respect.**

## **Appendix**

### **THE CONTROL OF POLLUTION (SILAGE, SLURRY AND AGRICULTURAL FUEL OIL) (SCOTLAND) REGULATIONS 2003 (SSI 2003/531)**

In its letter of 18 November 2003 the Committee sought explanation of the following matters.

- (1) The Executive is asked to clarify that the reference in regulation 12 to the 1999 Regulations is correct.
- (2) The Committee seeks an explanation of the meaning of the words “the present Regulations” in the full out after sub-paragraph (c) in regulation 1(3) on page 2.
- (3) The Committee also observes that the Executive has chosen not to revoke amending instruments in addition to the principal Regulations. Both the 1991 Regulations and the 2001 Regulations were amended by other Regulations and, although it is not strictly necessary in legal terms, it is generally regarded as good practice to “clear the statute book” whenever possible. The Executive is therefore asked for its comments on this matter.

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

1. The reference in regulation 12 to the 1999 Regulations is, unfortunately, an error. The reference should have been to the 1991 Regulations. There are no 1999 Regulations and therefore that reference requires to be treated as pro non scripto. The 2001 Regulations have, however, been correctly revoked, and those Regulations are the means by which provisions of the 1991 Regulations were, by savings provision, retained in force. Since that savings provision is now revoked with the rest of the 2001 Regulations, the practical outcome is the same. However, when the opportunity next arises we will formally revoke the 1991 Regulations.
2. The expression is intended to refer to the Control of Pollution (Silage, Slurry and Agricultural Fuel Oil) (Scotland) Regulations 2003 in its entirety so far as relevant to that reference in regulation 1(3). The Executive is of the view that it is clear from the context of the words that they have that meaning and that it would be difficult to see any other meaning which could be taken. However, it is noted that the expression in fact reads “the present Regulation”. This is a clerical error. Although it is assumed that the meaning is clear in the context we are exploring the issuing of a correction which will be widely circulated.
3. The Executive notes the Committee’s view that good practice would be to “clear the statute book” and revoke the provisions which amended the 1991 Regulations and the 2001 Regulations as well as those Regulations

themselves. The Executive accepts that point and will take the next legislative opportunity to do so.

**Scottish Executive Environment and Rural Affairs Department**

20 November 2003

## **European Union Issues - Update**

### **Background**

1. At its meeting on 10 September 2003 the Committee agreed its approach to gathering information on relevant EU issues and legislative proposals, and integrating those into the Committee's work programme discussions. The Committee agreed:

- to seek written reports from the Minister prior to and after each relevant meeting of the Council of the EU;
- to seek a briefing paper from the Minister on his priorities at the beginning of each six-month presidency of the Council;
- to invite the Minister to give oral evidence to the Committee at the start of each presidency;
- to authorise the Convener to seek further detailed briefings from the Minister as required.

The Minister has agreed to all these requests. In addition, the Committee receives a fortnightly paper from the European and External Relations Committee highlighting EU documents of particular relevance.

2. All these information sources are therefore now established as a means of allowing members to be aware of the various EU proposals which may be of interest. Further information about any of the issues highlighted in these sources can be obtained from the clerks at any time.

3. The Committee also acknowledged that the volume of EU material relevant to its remit is very significant. Awareness of European legislation may be relevant to a large portion of the Committee's referred work, such as primary and secondary legislation. However, the Committee agreed that its workload would mean that it would have to be selective in undertaking detailed consideration of any EU issues on its own initiative (e.g. by undertaking inquiries). The Committee therefore agreed that the Convener should provide an update on relevant issues approximately quarterly as the basis for work programme decisions. This is the first such update.

### **Relevant current issues**

4. While the number of EU legislative proposals relevant to the Committee's remit is large, below are a number of the main current issues (along with a short note on their current status and their likely impact on Scotland or on the work of the Committee). This is not an exhaustive list, but a selection of some major items. The list contains a mixture of items – some of which are at an early stage of development or not yet concluded at EU level, and others which are concluded at EU level and await domestic implementation.

## **a) Environment**

### **5. Chemicals policy**

The Commission presented a major proposal for a new regulatory framework for chemicals on 29 October. This proposed system (called REACH) would replace over 40 existing Directives and Regulations. It aims to improve the protection of human health and the environment while maintaining the competitive and innovative capability of the EU chemicals industry. The proposal is for a Regulation, which will be directly applicable in UK law without the need for subordinate legislation to transpose it. It will be agreed by co-decision of the European Parliament and the Council. Scottish subordinate legislation may be required to implement enforcement and infringement measures.

### **6. Waste management and resource use issues**

#### **a) Waste Electrical and Electronic Equipment (WEEE) Directive**

In January 2003 Directive 2002/96/EC was agreed. This major Directive aims to promote re-use, recycling and other forms of recovery of electrical and electronic waste. Producers will be responsible for taking back and recycling electrical and electronic equipment. This aims to provide incentives to design electrical and electronic equipment in a more environmentally efficient way, which takes waste management aspects fully into account. Consumers will be able to return their equipment free of charge. Subordinate legislation will be required to transpose this into UK law by 13 August 2004. If this is done by a separate Scottish instrument it is likely to be considered by the Environment and Rural Development Committee.

#### **b) Batteries**

In November 2003 the Commission adopted a Proposal for a new Battery Directive, which will require the collection and recycling of all batteries placed on the EU market. It aims to prevent spent batteries ending up in incinerators or landfills and therefore to recover the various metals used in batteries. This will be subject to the co-decision procedure. Subordinate legislation (which is likely to be considered by the Environment and Rural Development Committee in due course) will be required to transpose this into UK law.

c) On 27 May 2003 the Commission adopted a Communication entitled 'Towards a thematic strategy on the prevention and recycling of waste'. This includes an assessment of Community waste policy in relation to prevention and recycling, with a view to develop waste management policy further. The objective of this Communication is to launch a process of consultation of the Community institutions and of waste management stakeholders to contribute to the development of a comprehensive and consistent policy on waste prevention and recycling. The consultation closes on 30 November 2003. A final strategy is expected to be produced in September 2004.

d) On 1st October 2003 the Commission adopted a Communication entitled 'Towards a Thematic Strategy on the Sustainable Use of Natural Resources'. This is part of the EU's response to the sustainable development agenda. It sets out basic ideas on how the EU should target its efforts to reduce the environmental impacts of resource use. It does not set out specific proposals. That will be done in the final strategy which will be developed over the next 18 months. At present the



Commission simply seeks the endorsement of the European Parliament and the Council for its approach.

e) On 18 June 2003 the Commission adopted a Communication on Integrated Product Policy. This is aimed at reducing resource use and the environmental impact of waste, implemented in cooperation with business. This is not a legislative proposal. At present the Communication will lead to discussions with the European Parliament and the Council, and with stakeholders. It is envisaged that the strategy will then be promoted in an information-led exercise, but legislation may be required to pursue the IPP strategy further. The Commission proposes to review the effectiveness of the IPP approach every 3 years from June 2003, by way of a published report submitted to the EP and Council. This Communication may be relevant to the Committee's proposed future work on sustainable development.

f) The Scottish Executive has issued a consultation on intended changes to the Special Waste Regulations 1996 (SI no 972), with responses required by 9 February 2004. Amendments are intended to enhance the control system for the movement of hazardous wastes in Scotland, with the aim of complying with EU law. Subordinate legislation to implement any amendments is likely to be considered by the Environment and Rural Development Committee.

During its recent Inquiry into the National Waste Plan the Committee considered a number of issues relating to EU waste management and resource use legislation. On behalf of the Committee, the Convener has sent a copy of the report, along with a covering letter, to Margot Wallstrom (the European Environment Commissioner) to contribute towards the current development of a strategy on waste reduction and recycling. A copy of this material has also been sent to all the Scottish MEPs.

#### **7. *Packaging regulations reform***

The Commission is pursuing an evaluation of the implementation of Directive 94/62/EC on Packaging and Packaging Waste and the assessment of options to strengthen reduction and re-use of packaging. This may result in further legislative proposals in the future. A review of implementation has recently been conducted by the Scottish Executive, jointly with DEFRA and the Welsh Assembly. An affirmative statutory instrument on measures to strengthen the Scottish implementation of existing European law has been laid before the Parliament and is likely to be considered by the Environment and Rural Development Committee on 10 December.

#### **8. *Bathing water Directive***

In October 2002 the Commission adopted a proposal for a revised Directive concerning the quality of bathing water which sets a higher health standard than the existing 1976/160 Directive. Based on research and on the experience with implementing the current Bathing Water and Water Framework Directives, the revised Directive provides long-term quality assessment and management methods in order to reduce both monitoring frequency and monitoring costs. It will be decided by the co-decision procedure and is likely to require subordinate legislation to be transposed to UK law. It is likely that the Environment and Rural Development Committee will consider this in due course. Members may wish to note that the Parliament has agreed to debate protecting bathing water quality on 4 December 2003.

## **b) Fisheries**

### **9. *December Council***

The meeting of the Agriculture and Fisheries Council on 16-19 December includes decisions on various stock management issues and quotas for the following year, and is of particular importance to the industry. Quota decisions will emerge as a directly applicable Regulation decided by the Council, and will not require to be transposed to UK law by subordinate legislation. In previous years the Minister has reported to the Parliament on the outcome of this meeting in the course of an Executive-initiated debate.

10. Members may wish to note that the European and External Relations Committee will take evidence at its meeting on 2 December 2003 from the Minister for Environment and Rural Development on the Scottish Executive's position ahead of the December Council. Any member wishing to attend this meeting should notify the clerks to the European and External Relations Committee directly. The Parliament has also agreed to hold a debate on fisheries on 10 December.

### **11. *Cod recovery plan***

At the December meeting of the Agriculture and Fisheries Council the Commission's proposal for a long-term cod recovery plan for the North Sea, west of Scotland and other areas will be discussed again. For the second year running scientists have recommended a zero catch of cod. In the absence of agreement on a recovery plan for cod at last year's December Council, temporary measures were adopted under the quotas regulation. As these will come to an end on 31 December 2003, the Commission will propose to extend the temporary measures until the cod recovery plan is implemented. All these measures will be Regulations of the Council, and will not require direct transposition to UK law by subordinate legislation. However, some aspects of interpretation or implementation of the measures may require transposition (in a similar way to the Days at Sea Regulations considered by the Scottish Parliament earlier in 2003). Any such regulations would be expected to come before the Environment and Rural Development Committee in due course.

### **12. *Regional Advisory Councils***

On 15 October 2003 the Commission adopted a proposal setting out a common framework for Regional Advisory Councils (RACs). The creation of RACs is one of the main pillars of the reform of the Common Fisheries Policy (CFP), agreed by the Council last December. The aim of these bodies is to strengthen dialogue by increasing the involvement of stakeholders in the CFP decision-making process. The structures of the RACs will be adapted to the characteristics of the fisheries and fishing areas concerned. The Commission proposal sets out the elements that will be common to all of them: the rules governing their creation, membership, structure, functioning and financing. Depending on the time of adoption of the present proposal, the first RACs could start operating in the spring of 2004. The Scottish Executive has issued a consultation (to close on 6 February 2004), to help inform its position on this proposal. When agreed, the proposal will not require subordinate legislation to transpose it to UK law.

## **c) Agriculture**

### **13. CAP reform package and Scottish consultation**

In June 2003 the framework for the mid-term review of the Common Agriculture Policy was agreed by the Agriculture and Fisheries Council. This has resulted in a revised framework Regulation and a revised Rural Development Regulation being formally adopted in September, with further detailed provisions to come. The regulations do not in themselves require subordinate legislation to be transposed into UK law. However, a number of significant aspects are open to national (and regional) discretion, and a range of subordinate legislation will be required to implement these in due course. The Environment and Rural Development Committee is likely to consider these instruments. The Scottish Executive has opened a consultation on implementation of the reforms (until 6 January 2004).

14. Related to this is the review of current agri-environment schemes which has been undertaken by the Scottish Executive. Proposed amendments to these schemes are subject to approval by the European Commission. It is expected that the Committee will consider subordinate legislation to implement amended schemes (such as the Less Favoured Area Support Scheme, Organic Aid Scheme and Rural Stewardship Scheme) early in 2004.

15. The Committee took evidence on CAP Reform from the Minister on 3 September, and touched on this again during consideration of the Scottish Executive draft budget on 8 October. The Minister indicated that key decision on elements of national discretion would be made in the early months on 2004 and the Committee agreed to return to this subject then. The Parliament also held a debate on CAP Reform on 6 November 2003.

### **16. Transport of live animals**

In July 2003 the Commission adopted a proposal on the protection of animals during transport. It introduces improved enforcement measures and much stricter rules for journeys of more than 9 hours (including journeys within Member States) which mirror other EU legislation governing the time that drivers can spend on the road. This will be subject to the consultation procedure, and decided by qualified majority voting in Council, possibly as early as April 2004. This will not require subordinate legislation to transpose it into UK law. It is expected to be in force by the end of 2005. However, some subordinate legislation will be required to introduce rules on penalties for infringements and for other operational provisions ancillary to the Regulation. This subordinate legislation is likely to be considered by the Environment and Rural Development Committee.

### **17. Sheep identification**

In December 2002 the Commission adopted a proposal for a Regulation on the identification and registration of sheep and goats. The proposal will reinforce current measures, specifically by introducing gradually in all Member States an identification system to mark each animal, making it possible to trace the individual movements of sheep and goats. This is part of ongoing efforts to prevent the spread of animal diseases. The Scottish Executive considers the details of the proposals to be unworkable. The proposal will be decided under the consultation procedure, with decision by qualified majority voting in Council possible in early 2004. The proposal will not require subordinate legislation to transpose it into UK law. However, some subordinate legislation will be required to introduce rules on penalties for

infringements and for other operational provisions ancillary to the Regulation. This subordinate legislation is likely to be considered by the Environment and Rural Development Committee.

### **EU timetable for 2004**

18. Members may also wish to note the following calendar highlighting some key events in 2004:

#### **January**

- Ireland takes over the Presidency of the EU
- Progress report to the Council of Ministers on the Lisbon Strategy on Sustainable Development

#### **March**

- Communication on climate change, reviewing and proposing policies to meet the EU's Kyoto greenhouse gas reduction targets
- European Council

#### **April**

- Report on progress towards renewable energy directive targets

#### **May**

- Enlargement of the Union to 25
- 10 Commissioners without portfolio (1 from each accession state) join the College of Commissioners
- Possible signing of the Constitutional Treaty
- Revision of the EU Sustainable Development Strategy
- Proposals for the EU's next financial perspective after 2006 (which the Commission proposed should have sustainable development as its political centre of gravity)

#### **June**

- Report on the implementation of the EU forestry strategy
- European Council
- European Parliament Elections

#### **July**

- The Netherlands takes over the Presidency of the EU

#### **September**

- Thematic Strategy on Waste Recycling and Prevention
- Thematic Strategy on Soil Protection
- Thematic Strategy on the Sustainable Use of Pesticides

#### **October**

- European Council

#### **November**

- New Commission of 25

- Priorities for 2005 announced

### **December**

- European Council

### **Work programming**

19. The Committee has agreed to take oral evidence from the Minister on the Irish Presidency of the European Council, which begins on 1 January 2004. A suitable date early in the new year will be arranged. As well as receiving a general outline of the Scottish Executive's priorities for the presidency period, the Committee may wish to use that session to take evidence on the outcome of the December Agriculture and Fisheries Council meeting or other specific issues of interest. Members are invited to notify the clerk of any issue which they would wish to address during that session, in order that the Minister can be advised of material to be covered.

20. The Committee is invited to:

- note the implementation of various methods of information gathering on EU issues;
- consider the usefulness of the information sources, and consider whether any improvements or additions are required; and
- note the work on EU issues already agreed by this Committee, other committees and the Parliament.

21. The Committee is also invited to consider whether it wishes to undertake any further work on any of the issues mentioned at paragraphs 5-17 above (or on any other EU issue). If so, the Committee is invited to consider whether it wishes to:

- authorise the Convener to seek a detailed briefing from the Minister on any topic of particular interest;
- request further information and detailed options for further consideration of any particular issue from the Convener as part of the next work programme discussion (scheduled for 14 January 2004).

Sarah Boyack MSP  
Convener  
27 November 2003