



ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

AGENDA

15th Meeting, 2003 (Session 2)

Wednesday 10 December 2003

The Committee will meet at 10.30 am in Committee Room 3.

1. **Subordinate legislation:** Allan Wilson MSP (Deputy Minister for Environment and Rural Development) to move—

motion S2M-671 in the name of Ross Finnie MSP— That the Environment and Rural Development Committee recommends that the draft Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003 be approved; and

motion S2M-672 in the name of Ross Finnie MSP— That the Environment and Rural Development Committee recommends that the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003 be approved.

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

the Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003, (SSI 2003/560)

the Pig Carcase (Grading) Amendment (Scotland) Regulations 2003, (SSI 2003/565)

the Plant Protection Products (Scotland) Regulations 2003, (SSI 2003/579).

3. **Nature Conservation (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

Tracey Hawe
Clerk to the Committee
Direct Tel: 0131-348-5221

The following papers are attached:

<p><u>Agenda Item 1</u></p> <p>the draft Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003</p> <p>the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003</p>	<p>ERD/S2/03/15/1a</p> <p>ERD/S2/03/15/1b</p>
<p><u>Agenda Item 2</u></p> <p>Extract from the Subordinate Legislation Committee's 14th Report</p> <p>the Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003, (SSI 2003/560)</p> <p>the Pig Carcase (Grading) Amendment (Scotland) Regulations 2003, (SSI 2003/565)</p> <p>the Plant Protection Products (Scotland) Regulations 2003, (SSI 2003/579)</p>	<p>ERD/S2/03/15/2a</p> <p>ERD/S2/03/15/2b</p> <p>ERD/S2/03/15/2c</p> <p>ERD/S2/03/15/2d</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>ERD/S2/03/15/3a</p>

**Subordinate Legislation Committee
Extract of 14th Report, 2003**

1. At its meeting on 2nd December 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 2003/560

Instruments subject to annulment

The Prohibition of Keeping or Release of Live Fish (Specified Species)
(Scotland) Order 2003 (**SSI 2003/560**)

Background

1. The Committee asked the Executive why this Order, which is made under a pre-devolution Act of the Westminster Parliament that extends only to Scotland, contains in article 2 a provision that defines “Scotland” for the purposes of the Order with reference to the Scottish Adjacent Waters Boundaries Order 1999 (SI 1999/1126).

Response

2. The Executive has explained that, because the definition provided by the Boundaries Order does not apply automatically to pre-commencement enactments, a definition was included to make it clear that the prohibitions imposed by the Order extend to the internal waters and territorial sea of the United Kingdom adjacent to Scotland (as determined by the Boundaries Order). The Executive’s response is reproduced at the Appendix to this report.

Report

3. While the intention may be clear, it seems to the Committee that the reply does not explain why the Executive considers that it has the necessary powers to define “Scotland” for the purposes of the Order. “Scotland” is not defined in the parent Act and therefore, according to the usual rules of statutory interpretation, would be construed “unless the context otherwise requires” as including the territorial waters off the coast of Scotland. The difficulty arises where the area of territorial sea attributable to Scotland may be uncertain. The concept of territorial sea is one that relates to a state not to parts of a state.

4. The Order attempts to deal with this problem by including a definition of Scotland in the Order that refers to the Boundaries Order. If the territorial extent of Scotland as defined by the Boundaries Order is coterminous with or

within the territorial extent of "Scotland" for the purposes of the parent Act then article 2 causes no difficulty.

5. If not, then there is a doubt as to how far article 2 is *intra vires* the enabling power. There is no information available to the Committee that would enable it to offer any further views on the point in relation to this Order. **The Committee therefore draws the attention of the lead committee and the Parliament to the instrument on the grounds that there are, to this extent, doubts as to whether it is *intra vires*.**

Appendix

THE PROHIBITION OF KEEPING OR RELEASE OF LIVE FISH (SPECIFIED SPECIES) (SCOTLAND) ORDER 2003, (SSI 2003/560)

On 25th November the Committee asked the Executive for an explanation of the following matter-

"The Committee notes that in article 2 of the Order there is a definition of "Scotland". The Executive is asked to explain the inclusion of this definition, given that the parent Act itself extends only to Scotland."

The Scottish Executive responds as follows:

As the Committee notes the parent Act extends to Scotland only. Scotland is not, however, defined in the parent Act nor in the Interpretation Act 1978. The Committee will note, however, that Scotland is defined in s126(1) of the Scotland Act 1998. The Interpretation Order (S.I. 1999/1379) provides that the definition in the Scotland Act is presumed to apply to any references to Scotland in a S.S.I. made under an Act of the Scottish Parliament.

The Interpretation Order does not apply as this instrument is made under a Westminster Act. The definition of Scotland was therefore included in the interpretation provision of this Instrument to make it clear that for the purposes of this Instrument Scotland has the same meaning as in s126 (1) of the Scotland Act 1998.

The inclusion of the definition of Scotland makes it absolutely clear that the prohibition of keeping or releasing live fish or eggs of the fish specified in the Schedules to the Order without a licence extends to the internal waters and territorial sea of the United Kingdom adjacent to Scotland (as determined by the Scottish Adjacent Waters Boundaries Order 1999 [S.I. 1999/1126]).

Scottish Executive Environment and Rural Affairs Department

27 November 2003