

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Wednesday 10 December 2003
(Morning)

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2003.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Wednesday 10 December 2003

	Col.
SUBORDINATE LEGISLATION	555
Draft Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003.....	555
Draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003.....	559
Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003 (SSI 2003/560)	565
Pig Carcase (Grading) Amendment (Scotland) Regulations 2003 (SSI 2003/565)	565
Plant Protection Products (Scotland) Regulations 2003 (SSI 2003/579)	565

ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE 15th Meeting 2003, Session 2

CONVENER

*Sarah Boyack (Edinburgh Central) (Lab)

DEPUTY CONVENER

*Eleanor Scott (Highlands and Islands) (Green)

COMMITTEE MEMBERS

*Roseanna Cunningham (Perth) (SNP)
*Rob Gibson (Highlands and Islands) (SNP)
*Karen Gillon (Clydesdale) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Maureen Macmillan (Highlands and Islands) (Lab)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Nora Radcliffe (Gordon) (LD)

COMMITTEE SUBSTITUTES

Alex Fergusson (Galloway and Upper Nithsdale) (Con)
Janis Hughes (Glasgow Rutherglen) (Lab)
Jim Mather (Highlands and Islands) (SNP)
Jeremy Purvis (Tweddale, Etrick and Lauderdale) (LD)
Mr Mark Ruskell (Mid Scotland and Fife) (Green)

*attended

THE FOLLOWING ALSO ATTENDED:

Joyce Carr (Scottish Executive Environment and Rural Affairs Department)
John Convery (Scottish Executive Environment and Rural Affairs Department)
Allan Wilson (Deputy Minister for Environment and Rural Development)

CLERK TO THE COMMITTEE

Tracey Hawe

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Catherine Johnstone
Roz Wheeler

LOCATION

Committee Room 3

Scottish Parliament

Environment and Rural Development Committee

Wednesday 10 December 2003

(Morning)

[THE CONVENER opened the meeting at 10:34]

Subordinate Legislation

The Convener (Sarah Boyack): Good morning. Agenda item 1 is subordinate legislation. I welcome the Deputy Minister for Environment and Rural Development, Allan Wilson, and his officials.

Copies of the draft Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003 and the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003 have been circulated to members. Both instruments are subject to the affirmative procedure, so the Parliament must approve them before they come into force.

We have two motions in the name of Ross Finnie, which invite us to recommend to the Parliament that the instruments be approved. As they deal with totally different subject matters, I intend to take them separately. As with all instruments that we consider under the affirmative procedure, we will kick off with a technical clarification session, which will enable us to seek an explanation of the detail while the officials are at the table. We will then debate the relevant motions.

Draft Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003

The Convener: The Subordinate Legislation Committee had nothing to report on the draft Water Environment and Water Services (Scotland) Act 2003 (Designation of Scotland River Basin District) Order 2003, so I invite the minister to make his opening remarks.

The Deputy Minister for Environment and Rural Development (Allan Wilson): I welcome the opportunity to introduce to the committee the order that designates the Scotland river basin district, which sets the administrative boundaries for the whole of the river basin management planning process and ultimately lays the foundations for cohesive management of our water environment.

Addressing stakeholders' concerns has been a key element of the designation process. We have consulted on river basin districts three times and each consultation went some way towards shaping the final designation. In the most recent consultation, the Executive's proposals generated some concern among key stakeholders in Dumfries and Galloway, because the region was split between the Scotland river basin district and the cross-border river basin district with England.

We have taken steps to address those concerns in the draft order that is before members. All Dumfries and Galloway catchments have now been included in the cross-border river basin district, which will allow for more effective administration of the water environment in the Dumfries and Galloway area. We believe that a balance of all interests has been achieved in the designation order and that it will lay the foundations for a modernised approach to protecting and enhancing Scotland's water environment.

For that reason, I commend the order to the committee.

The Convener: Thanks very much. Do members have any points of clarification or want to seek any explanations?

Maureen Macmillan (Highlands and Islands) (Lab): I notice that the line that marks the boundary of the Scotland river basin district is drawn to include the Western Isles and the Scottish mainland but that, although Orkney is included, Shetland is not. Why is that?

Allan Wilson: Which map are we talking about?

The Convener: It is difficult to say, because it does not have a number. It has the title, "Scotland River Basin District: Assignment of Groundwaters".

Rob Gibson (Highlands and Islands) (SNP): The boundary extends for 3 miles at each side of the islands.

Maureen Macmillan: I would have thought that the situation would be the same for the Western Isles.

The Convener: One at a time, please. Joyce Carr can clarify that point; I am sure that it is a technical issue.

Joyce Carr (Scottish Executive Environment and Rural Affairs Department): The boundaries, which have been produced by the United Kingdom Hydrographic Office, are based on the territorial baseline for Scotland. The Minches and all the waters between the Western Isles and the mainland are included in the territorial baseline. That is why the mainland boundary includes those islands. The situation of Shetland is different from that of Orkney simply because of the distances involved.

The Convener: That is helpful.

Allan Wilson: The extension of the boundary out to 3 miles was a consequence of the Water Environment and Water Services (Scotland) Act 2003.

Maureen Macmillan: You learn something every day.

The Convener: Are there any other points of clarification?

Nora Radcliffe (Gordon) (LD): I presume that the bits of the country that we have missed out will not be designated until England and Wales get round to designating their river basin district.

Joyce Carr: Are you referring to the cross-border area?

Nora Radcliffe: Yes.

Joyce Carr: That is correct. We are working with the Department for Environment, Food and Rural Affairs. The designation of the area should take place in the next couple of weeks; that will be done through Westminster.

Nora Radcliffe: Westminster will designate the cross-border river basin district, even though the relevant legislation is not yet in place.

Joyce Carr: It will be done through regulations rather than through primary legislation—as we did it, through the Water Environment and Water Services (Scotland) Act 2003. DEFRA is working to put through regulations to meet the 22 December deadline. The cross-border area will be designated separately, using a separate statutory instrument. Once that is ready, we will write to the committee to outline what will happen.

The Convener: We will get an update on that.

Allan Wilson: Yes, we are working with DEFRA on those Scottish catchments that are included in the prospective cross-border designation.

Eleanor Scott (Highlands and Islands) (Green): I have another query that probably has an obvious answer. The final two maps attached to the order each include a red hatched area on the Scottish side of the line, which is described as “Groundwater Not Assigned to Scotland”. What does that mean?

Joyce Carr: It means that the area of surface water does not match the area of groundwater. In maps 1 to 9, we have drawn a line to designate the surface waters, but that does not fit neatly with the groundwater that lies below the surface. Because the areas of groundwater that are marked by hatching extend into the cross-border area, it was considered more appropriate to designate those areas of groundwater with the cross-border river basin district rather than with the Scotland river basin district.

The Convener: Are there any other questions?

Nora Radcliffe: Is that because more of the groundwater is across the line, in the cross-border river basin district?

Joyce Carr: Yes. The water framework directive tells us that, where such waters straddle the border, they should be assigned to whichever river basin district is more appropriate.

Allan Wilson: Specific provision was made for that in the Water Environment and Water Services (Scotland) Act 2003.

The Convener: I remember that.

Nora Radcliffe: A fair chunk of Scotland is in the cross-border river basin district. When we come to designate sub-river basin districts, will they be administered south of the border or north of the border?

Joyce Carr: The proposals that we are considering with DEFRA are that there should be joint working between Scottish ministers, Westminster, the Scottish Environment Protection Agency and the Environment Agency, to ensure a co-ordinated approach. It is also proposed that, because Scotland is the main area in the cross-border district, SEPA is more likely to take the lead.

Allan Wilson: The adoption of a catchment-based approach to the designation process has meant that we have avoided being artificially bound by borders or boundaries. I am sure that members will agree that that is a more environmentally friendly way of proceeding.

Nora Radcliffe: That is absolutely the right way to do things.

The Convener: Does anyone else want to raise a technical matter or ask for an explanation before we move to the formal debate on the motion?

Rob Gibson: Can we have the minister's assurance that he will keep us informed about the working of the new cross-border arrangements that are to be put in place with DEFRA and that he will give us a regular report on those novel proposals?

The Convener: I think that we are expecting an update report on the Water Environment and Water Services (Scotland) Act 2003 in March. The matter should come back to the committee.

Allan Wilson: And to the Parliament. We are in the process of preparing an annual report on progress on the Water Environment and Water Services (Scotland) Act 2003.

The Convener: We are keen to follow progress. Through our work programme, we should be able to keep an eye on the issue that Rob Gibson mentioned.

We have had a number of important technical questions. If there are no further questions, we will move to the formal debate on the motion.

Motion moved,

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.—
[Allan Wilson.]

The Convener: Does any member have anything to say?

Maureen Macmillan: I want to say that the draft order is a good thing.

The Convener: We like it.

Nora Radcliffe: I will be equally brief and say that we welcome the order.

The Convener: I invite the minister to wind up. There are no queries to answer.

Allan Wilson: I agree that the order is a good thing.

Motion agreed to.

The Convener: We will report that to the Parliament.

Draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003

The Convener: We will now consider the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003. Again, the Subordinate Legislation Committee has considered the instrument and has nothing to report. I will allow a few minutes for the minister's officials to swap round.

After that diplomatic pause, I invite the minister to make any opening remarks on the instrument.

10:45

Allan Wilson: The draft regulations—which must have the longest name of any draft regulations that I have put before the committee—contain the latest in a series of amendments that have been made to the packaging recovery scheme since it was introduced in 1997. The scheme requires businesses covered by the regulations to take responsibility for ensuring that target levels of recovery and recycling of packaging waste are met each year. They can do that either individually or collectively through membership of a compliance scheme.

The primary purpose of the draft regulations is to set new business recovery and recycling targets for packaging waste for the years 2004 to 2008. Those will ensure progress to recover more of that

waste stream in line with the objectives of the national waste strategy and to build towards the new European directive targets that are expected to be set for 2008 and beyond.

The draft regulations make a number of changes to the existing system, which are aimed at streamlining its workings, improving the quality of data submission and improving accountability. Subject to Parliament's approval, they will come into effect on 1 January 2004. With the other Administrations in the United Kingdom, we consulted widely on the changes during the summer. We sought views on the future targets and on a range of possible measures to improve the existing system. I will outline the most significant changes.

The first change is to make the acquisition of packaging recovery notes—PRNs—a statutory requirement. That will eliminate the potential for an obligated party to try to discharge its obligation by an alternative means, which may or may not be directly beneficial to the UK's efforts to meet the directive targets. Secondly, the regulations will make the approved recyclers accreditation process a statutory one. That will set down conditions that recyclers must meet in return for being permitted to issue PRNs. It will also enable SEPA to charge a fee to recover the cost of inspecting and auditing the reprocessor, which it currently cannot do.

Thirdly, the regulations will clarify ministers' position as regards the approval of compliance schemes. Currently, a compliance scheme must be approved by ministers before it may register with SEPA, but the regulations are silent about the process itself. The amendments rectify that. Finally, the regulations will make compliance scheme operators legally responsible for discharging the obligations of their members, which will avoid any confusion in future over the legal responsibilities of compliance scheme operators.

A number of technical measures have been included in the regulations to ensure more robust collection and assessment of data on packaging use. The measures in the draft regulations were endorsed by the Advisory Committee on Packaging prior to consultation and, when they were put out to consultation, received the broad support of the packaging-using industry. By setting new recovery and recycling targets for 2004-08 and by improving the system in the way that I have described, the regulations will enable Scotland and the UK to meet the packaging directive's obligations.

I commend the regulations to the committee.

The Convener: I will take members' points of clarification and questions.

Roseanna Cunningham (Perth) (SNP): The policy objectives that are laid out in the Executive note say that the regulations

“apply to companies with annual turnover of £2m and which manufacture or use 50 tonnes of packaging products or materials each year”.

Let me put in basic terms a point that might be obvious to everyone else, but is not obvious to me. When the Executive note refers to companies that “manufacture or use 50 tonnes of packaging products”

does it mean that the manufacturer or the person who packages the jammy dodgers will be done under these regulations, but not the supermarket that stocks them on its shelves? Are the supermarkets completely out of the picture in that sense?

John Convery (Scottish Executive Environment and Rural Affairs Department): No, they are not. We are referring to the manufacture of the packaging, which means that the obligation falls on the manufacturer of the wrapper and the person who makes the jammy dodger and puts it into the wrapper. The regulations apply to everyone in the packaging chain.

Roseanna Cunningham: But, under the regulations, the supermarket that puts the product on its shelves is not considered to be part of that chain.

John Convery: It is. Retailers are obligated under the regulations.

Roseanna Cunningham: I just wanted to clarify that point, because it would be difficult to pursue hundreds of different companies for every piece of packaging.

The Convener: It would be useful to find out how the packaging chain works.

Allan Wilson: Yes. It is the key to the whole thing.

Roseanna Cunningham: How would responsibility for compliance be allocated to the various parts of the process? After all, if we use the jammy dodger example, there is a whole chain right down to the point at which the biscuits are sitting in a great heap on the shelves in their three or so layers of packaging.

John Convery: The regulations apportion packaging use among manufacturers of the primary packaging product or material; the converters of the packaging material into the packaging product; the industries or businesses that use the packaging; and the seller or wholesaler. As a result, everyone who handles or uses packaging is caught in the system.

Roseanna Cunningham: All the way down the line?

John Convery: Yes.

The Convener: That sounds quite complex, but I assume that, because you have consulted the industry, people now understand their respective roles as far as the obligations are concerned.

Roseanna Cunningham: I just wanted to clarify that the supermarket does not avoid responsibility because it does not package; it also has a responsibility simply by stocking and selling the goods.

Allan Wilson: It is a fair point. I should also point out that the chain extends to the importing of packaging.

The Convener: The department should be commended for the in-depth work that has obviously gone into the regulations. Indeed, it is one of the most impressive sets of background papers that we have ever received for a statutory instrument.

Allan Wilson: It will all be repackaged.

Nora Radcliffe: Can I have an idiot's guide to how these compliance companies with members work?

Allan Wilson: Sorry?

Nora Radcliffe: I presume that there are businesses that make it their business to help their members comply. Will you give us the idiot's guide to how those businesses work?

John Convery: Okay. I must be the idiot.

Individual businesses can join what are called compliance schemes. At that point, their recovery obligation is transferred to the scheme, which allows the small or larger business to get on with selling or making whatever it sells or makes and not to worry about the compliance effort. It pays a fee to the compliance scheme, which collates the data, works out the obligation, ensures that the obligation is met and reports to SEPA. The scheme is registered with SEPA.

Nora Radcliffe: So it has the same sort of role as an accountant who does your books.

John Convery: Very much so. The compliance scheme also takes on a member's legal obligation.

Allan Wilson: We have proposed that, because it was not always the case. Although individual companies that registered with SEPA directly had statutory responsibilities, such responsibilities did not always extend to compliance schemes. That is why such an approach has not always worked and why we have made the change. The only sanction was deregistration, which might not have been the most appropriate under the circumstances. Fines and/or penalties are probably more appropriate for individual breaches.

Nora Radcliffe: And presumably SEPA monitors the whole thing. Does it carry out spot checks, audit trails and so on?

John Convery: It carries out fairly regular inspections and publishes an inspections programme. I do not really know the conditions for various schemes and companies, but I think that no one should go for more than three years without being inspected or audited.

Nora Radcliffe: The fact that SEPA will now be able to charge a fee for cost recovery will make it employ more staff to do more.

John Convery: Yes; SEPA will carry out more inspections.

The Convener: As there are no other points of clarification or questions, I invite the deputy minister to speak to and move motion S2M-672, in the name of Ross Finnie, on the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003.

Allan Wilson: The draft amendment regulations will make a significant change to improving further recycling and reuse of packaging waste, on which we have a good record over the past five years, during which we have almost doubled our target.

I move,

That the Environment and Rural Development Committee recommends that the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003 be approved.

Eleanor Scott: With regard to the regulatory impact assessment, the risk assessment assumes an increase in packaging waste over the years. There is an obvious increase in what is recycled, but there is also an overall increase in the production of packaging waste. Are there any moves at any level to try to reduce that? That point was raised in our inquiry into the national waste plan.

The Convener: We are in the formal debate now, so I will take members' comments together.

Having looked at all the paperwork, I note that the draft regulations will come into effect on 1 January, which is probably not a day on which we will be looking at the Executive website. It occurs to me that although the draft regulations put quite a significant responsibility on people, they are a good-news story about improving the way in which we treat our waste. Eleanor Scott made the point that we are not talking about less waste; we are talking about dealing with a big problem. I hope that that will concentrate people's minds.

It would be useful if the Executive were able to produce some information to go on to the website—even if only for one day—so that people could understand the substance of the regulations.

It would take people quite a while to wade through the committee's paperwork. The draft regulations represent another marker in the progress that we are making on the national waste plan. I ask the minister to reflect on my suggestion.

Rob Gibson: I want a reality check. I am sorry if I missed the figures, but the deputy minister said that we have doubled the amount of recovery. Will he state the figure for recovery that we started with, so that I can understand the amount to which it has doubled?

The Convener: As members have no more comments, I ask the minister to wind up the debate and to reflect on members' comments as he does so.

Allan Wilson: The first point, about waste minimisation, was the most important one. Waste minimisation is a key part of our national waste strategy. Built into the draft regulations are incentives for producers and the industry to reduce the amount of waste that they produce and, in so doing, to reduce the requirement on them to reuse or recycle. That will reduce the obligation on and the cost to the producers and society in general of the production of waste.

Our waste repackaging, reuse and recycling scheme is well regarded in Europe. It is one of the most efficient schemes and has one of the lowest compliance costs. The figures for 1997 show that we recovered 3 million tonnes; by 2002, the figure had increased to 5 million tonnes, which is a 65 per cent compliance rate across the piece. In 1997, the UK recovery rate was 30 per cent; it is now 58 per cent and increasing. Those are significant improvements, both numerically and in percentages terms, if you like.

On the convener's point, it is appropriate that we look at the website and the way in which we disseminate information to the wider public because, as members appreciate, a lot of the information is technical. Although it is well understood by the waste packaging industry, I suspect that it is much less well understood by the man and woman in the street. We will consider that.

The Convener: The question is, that motion S2M-672, in the name of Ross Finnie, be agreed to.

Motion agreed to.

That the Environment and Rural Development Committee recommends that the draft Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2003 be approved.

The Convener: I thank the minister and his officials for attending. The committee will report formally to the Parliament on both instruments.

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

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

Plant Protection Products (Scotland) Regulations 2003 (SSI 2003/579)

11:00

The Convener: We move on to agenda item 2, under which we have three Scottish statutory instruments to consider under the negative procedure: 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); and the Plant Protection Products (Scotland) Regulations 2003 (SSI 2003/579).

The instruments have already been considered by the Subordinate Legislation Committee, which commented only on the first instrument. Copies of the relevant extract from the Subordinate Legislation Committee's report have been circulated to members. Do members have any comments?

Nora Radcliffe: Does anyone know about the pig carcase grading regulations? One way of grading is to be discontinued and I meant to try to get hold of someone in the pig industry to get an explanation of the regulations. The industry can now use something called AUTOFOM but authorisation has been withdrawn for the use of an apparatus called Ultra-FOM. I wondered whether there will be difficulties with the withdrawal of that authorisation, but for all I know it could be something that has not been used for 20 years. Has the company that produced one apparatus been superseded by another?

The Convener: The clerk has some background information from the Executive about the consultation process that was carried out before the regulations came to us.

Nora Radcliffe: That would be helpful.

Mark Brough (Clerk): The Executive note states that the Executive wrote to the industry in August regarding the proposed amendments, and that no objections were raised.

Nora Radcliffe: Presumably, anyone who uses Ultra-FOM is happy to move to AUTOFOM.

The Convener: Yes. If you want a note on that technical point, I suspect that it would be possible to find out some information. However, it seems that there has been a consultation, and no objections were received.

Alex Johnstone (North East Scotland) (Con):

It is interesting that, in the industry, the only issue about pig carcase grading over the years has been lack of consistency in grading. Ultimately, anything that improves consistency will be welcomed by the industry.

Karen Gillon (Clydesdale) (Lab): It is an optional measure rather than a compulsory measure.

The Convener: It is a negative instrument, so it will go through unless someone is unhappy with it. Are members content?

Roseanna Cunningham: Can I ask about the issue that the Subordinate Legislation Committee raised on SSI 2003/560, on live fish?

The Convener: Shall we finish dealing with the pig carcase regulations first?

Rob Gibson: I do not want to prolong the discussion, but if we are moving from Ultra-FOM to AUTOFOM, or the other way round, is there a means of withdrawing the old chemical, process, or whatever it is?

The Convener: None of us is an expert on the matter, but there are one or two questions. The clerk has confirmed that we have the opportunity to bring the matter back next week so that the Executive can address and clarify the points that have arisen. We can get a note from the Executive and come back to the matter next week, if members want to do so.

Rob Gibson: Are we intending to meet next week?

The Convener: We must meet formally next week; the question is for how long.

Karen Gillon: I recollect that industries are very quick to make representations to us whenever they think that regulations are controversial. Given that no such representations have been made, my gut reaction is that the regulations are not controversial and that we should just get on with them.

The Convener: The matter is in members' hands. However, a number of questions have been asked, some of which we cannot answer as we did not receive in advance the notification that would have enabled us to seek more detailed information.

Mr Alasdair Morrison (Western Isles) (Lab): Karen Gillon is right. If the regulations were controversial we would already have heard about them from people who are informed about them and will be directly affected by them.

The Convener: We can take the matter forward in two ways. We can ask for supplementary information for those members who want it or we

can formally defer consideration of the regulations until next week's meeting. I suggest that we choose the first option. Do members agree?

Nora Radcliffe: At next week's meeting it will take only half a minute to get reassurance on the points that have been raised today. I would rather that our questions were answered before we took any decision on the regulations.

The Convener: I am happy to defer consideration until next week. I do not think that the matter is controversial—

Nora Radcliffe: I am sure that it will prove not to be, but I would feel happier if our questions were answered before we gave the nod to the regulations.

The Convener: As a general point, if members want to raise points of clarification or technical questions, it is good practice to notify the clerks before the meeting, so that we can get the information, or chase it up if the Executive has not supplied it. That avoids a situation in which the matter has to appear twice on our agenda. In this case, we can defer consideration of the matter, but we will not always be in a position to do so.

Nora Radcliffe: I apologise for not doing the homework.

The Convener: Roseanna Cunningham wanted to raise a point about the Prohibition of Keeping or Release of Live Fish (Specified Species) (Scotland) Order 2003.

Roseanna Cunningham: I am puzzling over the Subordinate Legislation Committee's report on the order, which says that the committee has doubts about whether the order is *intra vires* or not, which I presume is a long way of saying that the committee thinks that the order might be *ultra vires*—I do not know why the report does not just say that. The report mentions a definition of Scotland that refers to the Scottish Adjacent Waters Boundaries Order 1999 (SI 1999/1126) and it includes the Scottish Executive's reasons for including in the order the reference to that definition. However, the definition in the instrument itself appears to come from section 126(1) of the Scotland Act 1998, so I do not understand the Subordinate Legislation Committee's point. That committee clearly has a problem with the order, but I am not clear about what that problem is: what the committee says in its report and what the order says do not seem to marry up at all.

The Convener: I agree. Having read the Subordinate Legislation Committee's report on the order too, I thought that we would spend time on the matter. Our job is to consider the subject matter of the order, so it is difficult for us to do anything about the order when the key point is whether or not it is *intra vires*, as we are not in a position to judge that.

We have enough time available to include the order on next week's agenda, and I would like the Subordinate Legislation Committee to clarify what we should do about it. The committee's report is not helpful; it simply raises an issue and Roseanna Cunningham is right to say that the committee and the Executive seem to use different reference points.

Roseanna Cunningham: The issue is technical and is not related to the subject matter, so when we send questions back to the Subordinate Legislation Committee, it might be a good idea to copy them to the Parliament's legal adviser, because the question whether an instrument is *ultra vires* is fundamental.

The Convener: The clerk tells me that the Subordinate Legislation Committee receives input from the legal adviser when it considers instruments.

Roseanna Cunningham: We might save some time by copying our queries about the order directly to the adviser.

The Convener: We could ask the clerks to make the point.

Roseanna Cunningham: We do not want to be in the position, in two years' time, of having agreed to an order that turns out to have been *ultra vires*. We would look stupid.

Karen Gillon: We need to get back to the Executive to clarify exactly which boundaries are being talked about. I am not convinced that there is necessarily a contradiction, but we need to check. The order raises some concerns with me.

Roseanna Cunningham: I suspect there might not be a contradiction but—

The Convener: Our problem is that from reading the paperwork we do not know.

Karen Gillon: We should get the full papers, put the issue on next week's agenda and consider it then.

Nora Radcliffe: The bit that may be *ultra vires* is the bit that defines Scotland. If it is *ultra vires*, does that negate the meat of the order, which is the prohibition on keeping or releasing certain live fish, or will the order stand whether the definition is *intra* or *ultra vires*?

The Convener: We need to receive proper advice from the Subordinate Legislation Committee and the Executive. I cannot see how we can make a rational judgment on the basis of the information that is in front of us.

Rob Gibson: I do not know whether the Scottish Adjacent Waters Boundaries Order 1999 supersedes something in the Scotland Act 1998—I do not think that it would. However, I know that

adjustments were made to the boundaries during the Scottish elections in 1999—a year after the Scotland Act 1998 was written. I ask to be shown on a map the boundaries that are stated in the Scotland Act 1998 and the boundaries that are delineated in the order, because we know that in certain cases the boundaries may have changed in terms of offshore jurisdiction.

Maureen Macmillan: That is the point that I was going to make. There was a debate about where Scottish territorial waters should be and where the lines are drawn, as the boundaries may have been different from what people expected.

Roseanna Cunningham: The boundaries were only for certain purposes, not for all purposes.

Maureen Macmillan: But I presume that the debate was about fish, and the order is about the release of fish. I wonder whether that is where the Subordinate Legislation Committee is coming from.

The Convener: I could let the debate go on for some time, but we need additional information. We can come back to this issue next week. The clerks have captured the range of questions. We will see whether, having received the right information, we can have a proper discussion next week.

Does anyone have any concerns about the Plant Protection Products (Scotland) Regulations 2003 (SSI 2003/579)?

Eleanor Scott: That is a lovely way to describe pesticides—“plant protection products”.

The Convener: If there are no concerns, are we happy to make no recommendation on the regulations?

Members *indicated agreement.*

The Convener: We have agreement on one piece of legislation. That is good. I clarify that the other two statutory instruments will come back to us at next week’s meeting.

11:12

Meeting continued in private until 12:17.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Monday 22 December 2003

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0870 606 5566 Fax 0870 606 5588

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

RNID Typetalk calls welcome on
18001 0131 348 5412
Textphone 0131 348 3415

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers