22nd Meeting, 2006 (Session 2)

Tuesday 19 September 2006

The Committee will meet at 10.00 am in Committee Room 2 to consider the following agenda items:

1. **End Year Flexibility:** The Committee will take evidence from—

   Tom McCabe MSP, Minister for Finance and Public Service Reform; David Stewart, Assistant Director, Finance Expenditure Policy Division; and John Nicholson, Finance Expenditure Policy Division, Scottish Executive.

2. **Aquaculture and Fisheries (Scotland) Bill:** The Committee will take evidence on the Financial Memorandum from—

   David Ford, Aquaculture and Fisheries Bill Team Leader; Dave Wyman, Head of Fish Health and Welfare Policy; and Dr. Pauline Munro, Group Leader, Fish Health Inspectorate, Scottish Executive.

3. **Schools (Health Promotion and Nutrition) (Scotland) Bill:** The Committee will consider its approach to the Financial Memorandum of the Schools (Health Promotion and Nutrition) (Scotland) Bill.

4. **Items in private:** The Committee will decide whether to take its draft report on the Financial Memorandum of the Transport and Works (Scotland) Bill and its commissioned research on the Economic Impact of the Scottish Budget in private at its next meeting, and whether to consider its draft report on the Financial Memorandum of the Aquaculture and Fisheries (Scotland) Bill in private at its meeting on Tuesday 3 October.

Susan Duffy
Clerk to the Committee
Room T3.60
Extn 85215
The papers for this meeting are:

**Agenda Item 1**

PRIVATE PAPER

**Agenda Item 2**

Submissions from:

- Association of Scottish Shellfish Growers;
- British Marine Finfish Association; and
- British Waterways Scotland.

**Aquaculture and Fisheries (Scotland)** Bill and accompanying documents (circulated to members in hardcopy only, copies available from the Scottish Parliament website)

PRIVATE PAPER

**Agenda Item 3**

Paper from the Clerk

**Schools (Health Promotion and Nutrition) (Scotland)** Bill and accompanying documents (circulated to members in hardcopy only, copies available from the Scottish Parliament website)
Finance Committee

22nd Meeting 2006, Tuesday 19 September 2006

Scrutiny of Financial Memorandum – Evidence on the Aquaculture and Fisheries (Scotland) Bill

1. The Aquaculture and Fisheries (Scotland) Bill (“the Bill”) was introduced to Parliament on 30 June 2006. The Environment and Rural Development has been designated the lead committee for the Bill at Stage 1.

2. The Finance Committee agreed to adopt a level 2 approach to its scrutiny of the Bill. Specifically, the Committee agreed to issue its standard questionnaire to potentially affected organisations and take oral evidence from Scottish Executive officials at its meeting on 19 September 2006.

3. The following submissions have been received so far and these are attached:

- Association of Scottish Shellfish Growers;
- British Marine Finfish Association; and
- British Waterways Scotland.

Kristin Mitchell
Assistant Clerk
Submission from the Association of Scottish Shellfish Growers

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
   Marginally, as the Bill is not really ‘aquaculture’ but fin fish farming (indeed, virtually all salmon) oriented

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
   Not applicable

3. Did you have sufficient time to contribute to the consultation exercise?
   Not applicable

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
   Yes

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
   Not applicable

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
   Yes, unless the provision of the Bill are drawn wider, to aquaculture rather than salmon farming, and taken to mean eg other parasites (which have destroyed shellfish industries elsewhere in the past, and ‘introductions’ of shellfish which could transfer disease and parasites from area to area (eg appearance of Bonamia in Loch Sunart (announced by SEERAD 28/07/06).

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
   Probably on the low side.

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
   Only if provisions are extended to shellfish and their associated diseases and parasites; difficult to quantify such costs, as this would be a new area of experience for us all.
Submission from the British Marine Finfish Association

The British Marine Finfish Association represents some of the smaller companies in Scotland who are trying to diversify the industry into other marine species aquaculture, specifically cod and halibut farming (at the moment – other species may follow in the future).

BMFA has some technical comments relating to fine details in the Bill, but these have been submitted to the Environment and Rural Development Committee. They have financial implications for our members, but in a sense the cost element is subordinate to the need to fine-tune these issues to become fit-for-purpose in themselves.

Our main concern that might be of interest to the Finance Committee is the fact that the Bill does not go far enough to removing the biggest financial threat to the industry: business disruption, damage and potential destruction as a consequence of fish health provisions.

We should stress that we understand just how hard Scottish Ministers have worked to go as far as they have done, and that the provisions in the Bill are a major step forward. We are not ungrateful for that effort.

However, we are obliged to make the following observations to the Finance Committee, because BMFA represents several smaller and financially vulnerable companies, and because for them and for the diversification effort in Scotland, serious concerns still remain.

Specifically, the major issues are:

- **“Payments”**. The provision in the Bill is termed ‘payments’ not compensation. Payments come under state aids rules, and experience has shown that developing schemes and having them approved by the Commission can take many months. Small company fish farmers faced with financial ruin have only a short period of time to assess their situation and hold discussions with bankers and creditors.
  - One solution is for the Executive (starting now) to draft a generic ‘emergency aids for aquaculture’ package, and have it pre-approved by the Commission. It can probably build in the case-by-case flexibility that Ministers might want. This is really just sound ‘emergency planning’, but the presence of such a scheme would be a great reassurance to many of our smaller companies

- **Matched Funding.** The example provided to us is for a hypothetical incident involving large scale salmon farming. An assumption of 50% assistance is made, and the overall sums of money are significant. Most salmon farming companies are large international groups, and are quite likely to have the resources within the group to provide the other 50% of funds. If a notifiable disease outbreak causes a problem for a BMFA member company, it is likely to be a much smaller amount of money involved, because of the smaller nature of our farms. However, our members are also small businesses, with perhaps just one or two farms. It is
very difficult to see where exactly they will find the financial resource to fund 50% of their losses due to legislative demands to slaughter fish (or restrict their trade – see later).

- **Payments against business damage through movement restrictions.** As things stand with the Bill as drafted, as far as *Gyrodactylus salaris* (GS) is concerned there is the potential for ‘payments’ to be made for both destruction of fish (clearance) on farms, and for what might be termed the consequential losses incurred by movement and other restrictions to trade. (Sections 17 to 19). The same provision for direct and consequential losses to farms caught up in movement controls does not appear to apply to any other notifiable disease. (Section 20).
  o It is important to be absolutely clear to the Committee that the potential for business financial losses through restrictions of trade (for farms otherwise completely unaffected by the disease organism in question) as a result of the establishment of ‘control’ or ‘containment’ zones, or designated areas, is potentially far greater than the cost of slaughtering out one infected farm in the middle of the zone.
  ▪ Anecdotally, during the recent VHS outbreak in Yorkshire, the cost of the fish slaughtered in the one infected farm amounted to some £100,000. 33 other farms in the area were caught up in movement restrictions, and just one of them has calculated that he has lost £200,000 during the incident.
  o Our understanding is that lawyers have interpreted soundings from the European Court of Human Rights when considering the GS provision for consequential loss payments.
  o **Question:** Has the Executive and its lawyers specifically asked for the same sort of guidance for consequential loss for other diseases?
  o We would remind the Committee of some of the opinions expressed by the Advocate General when he was asked to comment on the joint VHS/ISA case some years ago. Extracting from his paper:

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**OPINION OF ADVOCATE GENERAL MISCHO**
delivered on 20 September 2001 (1)
Joined Cases C-20/00 and C-64/00

Specifically:

97. The situation of Booker and Hydro must also be distinguished from that in which disease prevention measures are applied to farms which may be exposed to risk but which, at the time when the restrictive measures are applied to them, have no case of the disease.

98. In such a case, it is certainly right to question, on the grounds of the principle of proportionality, the admissibility of draconian measures imposed without payment of compensation, for purely preventive reasons. In my opinion, in that case, the balance between the public interest pursued and the extent of the sacrifice imposed on the farmer whose farm is free of any contamination might tend towards the payment of compensation.
And:

131. In my opinion, the situation would be different if it were a question of destroying the fish in an aquaculture facility not yet infected by the disease, solely for the purpose of preventing the bacteria or virus from entering an area favourable to the subsequent geographical spread of the disease. In that case, where the disease may well not occur in the facility in question, the obligation to kill the animals would be comparable to a burden imposed by the public authority in the public interest. It probably ought, therefore to give rise to the payment of compensation.

- **Not just investor confidence.** The supposition is that provision for payments in the Bill are in part intended to support ‘investor confidence’. Whilst this is certainly true with respect to the multinational companies that are now the overwhelming investors in our industry, there are additional and quite different requirements for our smaller local companies. In their case the issue is pure business and personal financial survival. Apart from fair compensation for stock subject to compulsory harvest and slaughter, financial help must be given to assist with replacing breeding stocks where necessary and there should be financial recognition of the time taken to re-establish the business trade. These important issues need at the very least to be discussed and preferably taken into account before final decisions are made about the ‘payments’ section of the Bill.

- **What is being protected.** BMFA understands that fish health legislation is not just designed to protect wild fish, but that it is also a worthy attempt to protect the entire industry, or at least reduce the overall economic cost of fish diseases. However, if the overall industry is being protected, then individual companies (particularly the small ones with little surplus to fall on their swords for the greater good) need to be looked after. Unless the wider industry can be somehow persuaded to provide a fund for such contingencies – and that is likely to be a difficult area – the only other way to provide an emergency fund is to recognise that the State is gaining income from the sector, by way of corporation tax; VAT; personal tax and national insurance; Crown Estate leases; compulsory SeaFish levies; etc. The more the legislative regime materially helps the sector, the greater the State’s income. It does not seem unreasonable to ‘complete’ the picture of the State trying to help the sector by way of fish health legislation, with an acknowledgment that assisting individual and vulnerable companies is part of the package, and is in effect a reinvestment to protect and develop the State’s long term income stream.

- **Why hesitate – what is the risk?** The ‘new’ marine species sector has been in existence in Scotland since the late 1970’s. Over a 30 year period, there has only been one incident of a notifiable disease that required implementation of a slaughter policy (the Isle of Gigha). It would not appear that Scottish Ministers are likely to be exposed to much financial risk by being visionary and supportive on this issue of compensation. The removal of the current threat to our small businesses would be a major boost to our efforts to raise new financial investment
for the sector\textsuperscript{1}. PA No. 327 talks about encouraging sustainable development and \textbf{diversification}. This would be a significant contribution to that effort.

\textbf{QUESTIONNAIRE}

\textbf{Consultation}
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

Yes

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

\textbf{Costs}
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

See initial comments

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

See initial comments

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Probably

\textbf{Wider Issues}
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

Not really, since it would appear difficult to reconcile \textbf{any} additional costs associated with this Bill, with the underlying principle behind Partnership for Government Agreement No. 328. BMFA understands why some of the provisions in this Bill are desirable for Scotland Ltd at this time, and that some of these provisions have cost implications. However, we believe Scottish Ministers now have an opportunity to demonstrate joined up government, by acting in other areas in such a way as to

\textsuperscript{1} This point is by no means just supposition or rhetoric on our part. We have faced this challenge when talking to bankers and other representatives from the financial sector, on more than one occasion. Threat of legislative destruction of an investment, one which is un-insurable through normal channels, is not an attractive proposition for risk-averse investors.
reduce the cost burdens on the industry. This would be entirely in keeping with the
overarching policy initiative that is articulated by Partnership Agreement No. 327.
One way to do this is contained within the Bill: the issue of payments for
compensation, as discussed at length above. Additionally we might see an
opportunity in the forthcoming Planning Regulations that will relate to marine
aquaculture. Planning (under the current interim arrangements) is the single biggest
area of regulatory cost burden on industry, through delays, consultants, appeals etc.
This is a golden opportunity to balance increased cost to business in one area, with
reduced cost in another.

8. Do you believe that there may be future costs associated with the Bill, for
example through subordinate legislation or more developed guidance? If so, is it
possible to quantify these costs?

Quite a lot of the future costs are potentially hidden, until the detailed guidance and
subordinate legislation is properly developed – this is one of the main concerns about
the Bill. Government is saying ‘trust us’, whilst introducing a whole range of enabling
powers, and providing very little detail to go with them. We understand why this is the
case, and we do not intend this comment to necessarily imply criticism of officials.
However, just as we can understand the challenges to officials to have everything
ready in good time and available for public scrutiny, we hope that they will not be
offended by our observation that this area remains a cause for concern. The devil is
inevitably in the detail, and we haven’t seen all the detail yet.
Submission from British Waterways Scotland

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?
Our consultation response dated 23 February 2006, did not include comments on financial assumptions.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?
Not applicable

3. Did you have sufficient time to contribute to the consultation exercise?
Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.
As we do not have fish farms, there is little direct cost to us. We do however have an interest in angling in Inland waterways. The additional cost of potential control measures appears to be accurately reflected.

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?
No additional costs are welcome, but the costs do appear to be of a level with which we could cope, should there be a need for control measures.

6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?
We believe that it does, though it does not appear to deal directly with fish in our canals or reservoirs, and the extent to which these measures may apply.

Wider Issues
7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?
N/A

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?
N/A
Finance Committee

22nd Meeting 2006, Tuesday 19 September 2006

Scrutiny of Financial Memorandum – Approach to the Schools (Health Promotion and Nutrition) (Scotland) Bill

Background
1. The Schools (Health Promotion and Nutrition) (Scotland) Bill (“the Bill”) was introduced to Parliament on 8 September 2006. The Communities Committee has been designated the lead committee for the Bill at Stage 1.

2. This paper has been prepared to assist the Committee to determine its approach to considering the Financial Memorandum for the Bill.

The Bill
3. “Hungry for Success” was launched in 2003 and introduced national, nutritional defined standards for school meals in Scotland and a strategy for delivering the standards and improving the uptake of meals.

4. The Bill seeks to build on this and places the following duties on all local authority schools (including hostels and nurseries) and grant-aided schools:
   - to ensure that all schools are health-promoting
   - to ensure that all food and drink complies with nutritional requirements
   - to promote school lunches (in particular free school lunches); and
   - to protect the identity of those receiving free school lunches

5. The Bill also gives powers to local authorities to provide food and drink at any time of the day either free or subject to a charge. This power does not apply to school lunches as the Bill states that these must be charged for unless a pupil is eligible for a free lunch.

Costs

Scottish Executive
6. The FM states that there may be modest costs for the administration of a short-term expert group to set nutritional requirements for all food and drinks provided in schools. These are not quantified.

7. There may also be some additional costs as a result of grant-aided schools having to adapt to the nutritional requirements. Again, these are not quantified, but the FM states they are expected to be marginal.

Local Authorities

Health promotion
8. According to the FM, no significant additional costs are anticipated
Nutritional Requirements, Promotion of School Lunches and Protection of pupils’ identity

9. The “Hungry for Success” recommendations are to be implemented by all local authority schools by December 2006. Therefore, it is not anticipated that significant additional costs will fall on local authorities as many recommendations will already have implemented, or will be close to implementation. However, the FM does say that “local authorities may be at different stages of implementation and the Bill may give rise to additional costs as some local authorities may be obliged to meet the requirements of “Hungry for Success” sooner than would otherwise have been the case.”

10. Although the Bill does not apply to independent schools, the Bill places a duty on authorities to consider whether such schools are meeting the nutrient requirements where a child’s education is funded by the local authority. Therefore, there could be some additional costs for authorities if independent schools require additional funding to meet these requirements.

11. Annex A of the FM updates the total estimated costs of implementing the “Hungry for Success” recommendations as follows:

<table>
<thead>
<tr>
<th>Start-up Costs</th>
<th>Unit Costs</th>
<th>Total Costs¹²</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meeting nutrient standards for school meals (Paragraphs: 26-28)</td>
<td>N/A</td>
<td>12p per meal¹</td>
</tr>
<tr>
<td>Promoting school meals (Paragraph: 29)</td>
<td>Minimal</td>
<td>£0 - £0.50 per meal</td>
</tr>
<tr>
<td>Increased uptake (Paragraphs: 30-36)</td>
<td>Minimal</td>
<td>£1.75 per primary meal and £1.76 per secondary meal</td>
</tr>
<tr>
<td>Eliminating Stigma (Paragraphs: 37-41)</td>
<td>£20,000 per secondary school plus £18,000 per local authority</td>
<td>£3,000 per secondary school plus £2,800 per local authority</td>
</tr>
</tbody>
</table>

School Meals and Snacks

12. As the Bill gives powers (and not duties) to local authorities to provide food and drink at any time of the day either free or with a charge, then the costs can only be indicative and will depend on whether local authorities choose to use these powers.

¹ Total costs have been calculated for all meals consumed in all local authorities in 2004-05. The total costs column should not be summed to estimate the total cost of Hungry for Success.
² The total costs do not account for money currently being spent by local authorities on the provision of Hungry for Success.
³ This figure is based on the average increase in the cost per primary school meal between 2003-04 and 2004-05, in real terms. This figure includes start-up costs of meeting the nutrient standards. This figure includes the cost of providing drinking water.
13. The FM provides a table showing the total estimated costs on local authorities should they use the additional powers:

<table>
<thead>
<tr>
<th></th>
<th>Start-up Costs</th>
<th>Unit Costs</th>
<th>Total Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Free Breakfast</strong></td>
<td>Unknown</td>
<td>£1.00 - £1.26 per breakfast</td>
<td>£70m - £88m per year for primary</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>£52m - £66m per year for secondary</td>
</tr>
<tr>
<td><strong>Free Fruit</strong></td>
<td>N/A</td>
<td>£0.17 per portion</td>
<td>£12m per year for primary</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>£9m per year for secondary</td>
</tr>
<tr>
<td><strong>Free Milk</strong></td>
<td>Minimal</td>
<td>£0.09 per serving</td>
<td>£6m per year for primary</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>£4.5m per year for secondary</td>
</tr>
</tbody>
</table>

Other

14. The FM states that some food and drinks manufacturers might receive reduced revenues in the short-term but that overall, it is not anticipated that there will be any significant financial implications as changes to nutritional requirements can be built into the product development cycle.

Conclusion

15. Many of the provisions of this Bill are only expected to give rise to modest costs as many of the “Hungry for Success” recommendations have already been (or should be close to being) implemented. However, if the powers given to local authorities are used with regard to the provision of food and drink at any time of the day, then the costs could be substantial. On that basis, it is proposed that the Committee adopts Level 3 scrutiny which would involve seeking written evidence from the following organisations:

- COSLA
- Scottish Health Promoting Schools Unit
- HMIE
- Scottish Food and Drink Federation
- Local Authorities Catering Association

16. It is then suggested that the Committee take oral evidence from COSLA and then from Executive Officials.

Susan Duffy
Clerk to the Committee

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4 The total costs do not account for money currently being spent by local authorities on the provision of breakfasts, fruit and milk.
5 Start-up Costs for providing fruit are included in Unit Costs.
6 The Unit Costs of milk do not include operational costs such as storing and serving milk.