The Committee will meet at 9.30 am in Committee Room 1.

1. **Subordinate legislation**: Maureen Macmillan MSP to move motion S2M-3967—That the Environment and Rural Development Committee recommends that nothing further be done under the Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371).

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

   motion S2M-190 in the name of Ross Finnie MSP—That the Environment and Rural Development Committee, in consideration of the Draft Code of Recommendation for the Welfare of Livestock: Pigs (SE/2003/173), recommends that the code be approved;

   motion S2M-232 in the name of Ross Finnie—That the Environment and Rural Development Committee recommends that the Draft Code of Recommendations for the Welfare of Livestock: Cattle (SE/2003/175) be approved; and

   motion S2M-189 in the name of Ross Finnie—That the Environment and Rural Development Committee, in consideration of the draft Welfare of Farmed Animals (Scotland) Amendment Regulations 2003, recommends that the regulations be approved.

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

   The Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No. 3) Regulations 2003, (SSI 2003/333)


4. **Work Programme**: The Committee will consider its forward work programme.
5. **Public Petitions:** The Committee will consider the following petitions—

   **PE 246** by Kildalton and Oa Community Council, Kilarrow and Kilmeny Community Council and the Kilchoman and Portnahaven Council, and Councillor J Findlay and Councillor R Currie on Special Areas of Conservation.

   **PE 365** by Mr Iain MacSween on behalf of the Scottish Fishermen’s Organisation Ltd on fixed fishing quota allocations and property rights.

   **PE 449** by Mr Alex Hogg on behalf of the Scottish Gamekeepers Association on the impact of predatory birds on waders, songbirds, fish stocks and gamebirds.

   **PE 462** by Mrs Margaret Currie, **PE 463** by Councillor Donald Manford and **PE 464** by Robert Cunyngham Brown on Sites of Special Scientific Interest.

   **PE 517** by Mr Rob Kirkwood on waste water treatment plants.

6. **Budget process (in private):** The Committee will consider its approach to the 2004-05 budget process, including—

   whether to seek the appointment of an adviser

   the remit and person specification for an adviser

   possible candidates for the post.

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**Tracey Hawe**  
Clerk to the Committee  
Direct Tel: 0131-348-5221  
tracey.hawe@scottish.parliament.uk
The following papers are attached or are relevant to this meeting:

<table>
<thead>
<tr>
<th>Agenda item 1</th>
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<tbody>
<tr>
<td><strong>The Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371)</strong></td>
<td>ERD/S2/03/4/1a</td>
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<td>Briefing paper from the Clerk is attached</td>
<td>ERD/S2/03/4/1b</td>
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<td>Letter from the Minister for Environment and Rural Development</td>
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<td>Extract from the Subordinate Legislation Committee’s 3rd Report 2003</td>
<td>ERD/S2/03/4/2d</td>
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<td><strong>The Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003, (SSI 2003/341)</strong></td>
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**Agenda item 6**

A paper from the Clerk is attached *(for members only)*

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ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

The Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371)

1. This paper outlines the background to this instrument, and notes some relevant work by the Rural Development Committee in the first session. It also outlines the procedure for consideration of the motion lodged by Maureen Macmillan MSP to annul the instrument.

Background

2. Proposals for technical conservation measures for the scallop fishery have been under consideration for several years. The Scottish Executive undertook a consultation in 2001, inviting views on various possible conservation measures, including technical adjustments to permitted fishing gear and limited weekend bans on fishing. Consideration of how to proceed with any such measures was, however, complicated by the difficulties the industry was facing due to closures of fishing areas on public health grounds due to Amnesic Shellfish Poisoning (ASP).

3. The Rural Development Committee produced a report on ASP in 2000, and continued to monitor developments. The Committee took evidence on the scallop industry twice in late 2002. On both occasions it considered issues relating to ASP (particularly proposed adjustments to the testing regime) and also on the separate issue of proposed technical conservation measures.

4. On 8 October 2003 the Committee took evidence from various industry representatives and Scottish Executive officials. Following that meeting the Committee wrote to the Minister for Environment and Rural Development questioning the evidence for, and the necessity of, the measures. On 19 November 2003 the Committee took evidence from the Minister, and wrote to him again following the meeting.

5. On technical conservation the main points made in the Committee’s letters were:

The necessity and appropriateness of such measures when the industry is overshadowed by the pressures associated with ASP was not clear. The Committee noted that there are differences of opinion within the industry on the proposals, but was not persuaded that some of the proposed measures, and in particular the proposed weekend ban, are appropriate. The Committee therefore requested that the Minister reconsidered his intention to introduce them at present.
In particular the Committee was very concerned that:

- no evidence or reasoned argument had been presented to indicate precisely what these measures are expected to achieve in conservation terms
- some within the fishing and processing sectors suggested that the weekend ban would result in no reduction in fishing effort, but rather would cause significant disruption to the processing industry and potentially expose crews to safety risks through the added pressure that an inflexible scheme would place on catchers
- the proposals did not appear to have changed significantly as a result of the 2001/2 consultation exercise, in spite of very substantial concerns expressed by a large proportion of the industry.

The Committee strongly recommended that the Minister engaged in early discussion with the industry to consider alternative approaches to conservation measures, including more robust use of scallop licences, alterations to the minimum legal landing size, or a days-at-sea scheme. Any revised proposals should be subject to a further process of formal consultation.

6. In response to these letters the Minister stressed the need for a precautionary approach to stock conservation. He also undertook to delay any conservation measures until he had received the conclusions of the ‘Ecodredge’ study then being undertaken into the scallop fishery, and indicated that he would decide in the light of those conclusions whether to consult again on proposed measures.

The current proposals

7. On 3 July 2003 the Minister wrote to the Committee outlining his revised plans for a phased approach to implementing technical conservation measures. The first phase of this approach is the statutory instrument which is before the Committee today. The instrument implements only the first part of the measures previously proposed, altering the permitted fishing gear. The measures in articles 4 and 5 of the instrument are basically unchanged since the originally proposal in the 2001 consultation.

8. In the previous correspondence the Minister recognised the controversy of a weekend ban. Further work is to be carried out to assess the likely impact of a ban, and this may be included in a further statutory instrument later in the year.

9. The proposed package of measures is to be reviewed in 2005 and integrated into a wider review of inshore fisheries (consultation on some aspects of which were launched in June 2003). A longer term scallop management strategy may include effort control measures.
The motion to annul the instrument

10. A negative instrument subject to annulment will become, or remain, law unless the annulment procedure is successfully invoked to prevent it. In this case, SSI 2003/371 will come into force on 22\textsuperscript{nd} September 2003 and will remain in force unless a motion to annul is successfully invoked. The Parliament has until 10 October to annul the instrument.

11. As lead committee, the Environment and Rural Development Committee must report to the Parliament with its recommendations on the instrument. Maureen Macmillan MSP has proposed that the lead committee recommend that nothing further is to be done under the instrument (i.e. that it be annulled).

12. Standing Orders provide that a member of the Executive is entitled to attend the meeting and participate in proceedings for the purpose of debating the motion. The Deputy Minister, Allan Wilson, will attend the meeting for this purpose, but may not vote. A member of the Parliament who is not a member of the lead committee may attend the meeting of the lead committee and may speak in the debate if invited to do so by the Convener but may not vote (Rule 12.2.2).

13. The discussion will begin with an opportunity for members to answer any factual questions or ask for clarification, whilst officials are seated at the table with the Minister. The Committee will then move on to formally debate the motion.

14. Maureen Macmillan will be asked whether she wishes to move the motion to open the debate. The debate is limited to 90 minutes (Rule 10.6.3). After a motion is moved it may be withdrawn at any time before the question is put, unless any member objects to it being withdrawn. To conclude the debate Maureen Macmillan will be asked whether she wishes to press or withdraw the motion.

15. If the motion is pressed, the Committee will decide its recommendation. If it recommends that nothing further should be done under the instrument, the Bureau will then propose a motion to the Parliament that nothing further should be done under the instrument. If that motion is agreed to, the Executive will be required to revoke the instrument.

16. The Executive may also elect on its own initiative to revoke an instrument at any time, whether for its own policy reasons or in response to representations from a member or committee.
There are a number of activities relating to inshore fisheries taking place over the summer, and I thought that Committee members might wish to be aware of them as they get underway, rather than wait until the reconvening of Parliament after the summer recess.

**Scallop technical conservation measures**

The Department has been considering technical conservation measures for scallops for a number of years. I announced in August 2002 that an SSI would be laid with a package of scallop conservation measures including:

- Zonal dredge limits
- A weekend ban
- A number of other technical measures.

A number of concerns were raised over the proposals at that time, relating mainly to the effects of Amnesic Shellfish Poisoning closures on the scallop industry. My officials and I gave evidence to the then Rural Development Committee in the autumn of 2002 and I undertook to postpone a final decision on the measures until the ECODREDGE report had been considered. The ECODREDGE project was initiated and coordinated by Seafish, and considered the evaluation and improvement of shellfish dredge design and fishing effort in relation to technical conservation measures and environmental impact.

I asked the Scottish Scallop Advisory Committee to give some consideration to the ECODREDGE report, and my officials also met with industry members over recent months to explore more
generally whether or not different views in the industry might be reconciled. Given all of these considerations, I have decided that there will be a phased approach to the protection of scallop stocks:

- An SSI will be laid in Parliament without delay. This SSI will set out dredge limits of 8, 10 and 14 dredges per side within 6, 6-12 and 12-200 miles of the Scottish Zone respectively. It will also include provisions to restrict the use of French dredges, prohibit the use of "blinders" and introduce a 20% bycatch limit for king scallops in the queen scallop fishery. This SSI would provisionally come into force towards the end of September 2003.

- There will be a short study on any potential economic impact of the proposed weekend ban, and a further amending SSI will be laid, hopefully by the end of the year. This SSI would introduce an increased belly ring size (the conclusion drawn from ECODREDGE), tow bar or dredge lengths, tooth spacing, and depending on the result of the study, would also introduce the proposed weekend ban.

- We will develop a longer term strategy for scallop management with the industry, possibly focusing on effort control. This could potentially lead to a system to that would replace or at the very least complement the measures already in place.

Following the Fisheries Research Services’ (FRS) most recent assessment of scallop stocks, we consider it prudent to build on the provisions of the scallop licence introduced in 1999 and increase protection for the stocks without further delay. In particular, there is some evidence in the FRS report that fishing grounds which were closed due to ASP were fished heavily on reopening, in some cases more heavily than before the closures. I hence intend to introduce dredge limits, along with the original provisions on blinders and French dredges, and a bycatch limit of 20%.

In discussions between my officials and industry over recent months, good progress was made in considering the detailed specifications of the gear (tow bars & tooth spacing) and in a number of cases industry members suggested better ways to describe the measures in legislation. Furthermore, the main (relevant) conclusion of ECODREDGE that links an increase in belly ring size with improved selectivity has been generally, although anecdotally, supported. Hence it would be useful to run these improvements past a wider section of industry, prior to introducing them later in the year. We also acknowledge that concerns relating to the potential effect of a weekend ban on foreign markets have not yet been fully addressed. We will, therefore, conduct a short study to identify, and attempt to quantify, the potential effects of the proposed ban on market supply, and we will seek the advice of SSAC and the Scottish Inshore Fisheries Advisory Group (SIFAG) on this issue.

We acknowledge that there may be more sophisticated and flexible approaches to the management of Scottish scallop stocks, some suggestions for which have been highlighted by the industry over recent months. SIFAG is in the midst of a strategic review of inshore fisheries, and one of the aims is to develop a strategy for the future management of the inshore. The Partnership Agreement also reflects the Executive’s commitment to increasing stakeholder involvement in fisheries management, and hence SIFAG & SSAC will wish to consider how the groups should be involved in the development of a strategy for scallops, in parallel with the development of a strategy specifically for the inshore. A strategy for scallops might include more strategic effort control measures, better use of stock assessment data, different stock assessment practices, more effective use of licences, contingency plans for ASP and so forth. We are very happy to work with the industry over the next 2 years to develop a strategy to manage scallops in the longer term.

One of the strong messages of the strategic review of inshore fisheries so far, is the need to review management measures regularly. Hence I am happy to commit to reviewing the measures in the SSIs in 2005.
Strategic Review of Inshore Fisheries

The Partnership Agreement reflects the importance the Executive attaches to the inshore, and a review of inshore fisheries is already well underway. The aims of the review are to examine the effectiveness of inshore fisheries management to date, develop a strategy for the future management of the inshore, and develop a framework to take us from the present system into the future. SIFAG is leading on this review, and is working very effectively with my officials to progress this important work. As part of this exercise, I launched a consultation exercise in June that will take a retrospective look at the workings of the Inshore Fishing (Scotland) Act 1984. There are a number of other strands of work also going on in relation to the strategic review, and we expect conclusions to begin to emerge towards the end of the summer.

Amnesic Shellfish Poisoning

The Committee has in the past taken an interest in the effects of Amnesic Shellfish Poisoning on the scallop industry. The Food Standards Agency is responsible for matters of public health in this context, but from a SEERAD perspective, our main concern has been uncertainty about the relevance of conclusions of research on mussels to a different species, and hence the effects on the scallop industry of working under a regime developed on mussels. The Executive has now instructed FRS to begin work on a project investigating the toxicology of king scallops. The project, which will be carried out by FRS and Dundee University, will look at the concentration of certain types of amino acids in scallops, how these synergise with domoic acid and assess the neurotoxicity of scallops through the use of cell culture. The project is estimated to last for 18 months at a cost of £123k, which the Scottish Executive will fund.

Whilst the project on its own is unlikely to lead to a re-evaluation of the existing ASP action level for scallops, it is a first step and will improve the available information and may point to areas where further work would be beneficial. It will also complement the industry-led scallop portion size study which has secured assistance from the Financial Instrument for Fisheries Guidance (FIFG) scheme. The Scottish Scallop Advisory Committee will continue in its role of considering these and other research related issues with the overall aim of informing the science behind the existing ASP action level.

I hope you find this update helpful. I have copied this letter to other members of the Committee, and also to the Committee Clerk.

ROSS FINNIE
REGULATORY IMPACT ASSESSMENT

The Prohibition of Fishing for Scallops (Scotland) Order 2003

Purpose and Intended Effect of Measures

1. Scallop stocks are under increasing pressure and their condition gives cause for concern. The latest stock assessment from FRS Marine Laboratory has demonstrated that most of the main management areas show declining biomass and uncertain or declining recruitment. The report also concluded that any stock stability or recovery is threatened by increasing fishing pressure and is exacerbated by the unpredictable effects of effort transfer caused by closures due to Amnesic Shellfish Poisoning (ASP).

2. As scallops are not subject to quota restrictions, technical measures are necessary to help conserve stocks. The Department has been in discussion with key stakeholders for a number of years to develop technical conservation proposals to help protect scallop stocks.

3. The measures to be introduced under this Statutory Instrument will limit fishing pressure on, and therefore protect, scallop stocks across the Scottish zone. They should give protection to stocks already under pressure due to increased fishing effort and problems of effort transfer caused by Amnesic Shellfish Poisoning. Future catch opportunities and the long-term sustainability of both the stocks and the scallop industry should be promoted by these measures.

Risk Assessment

4. Around 150 Scottish-based vessels landed over 8,000 tonnes of scallops using dredges in 2002. The value of these landings came to £13 million. The majority of these vessels will not be affected by the dredge limits as they do not use more than the specified maximum number of dredges per side. However, some vessels will be required to reduce the number of dredges per side which are being used which will reduce effort on the stocks. The limits will also prevent other vessels from greatly increasing the number of dredges per side which they use, which would significantly heighten pressure on the stocks.

5. The Scottish Executive is also concerned that, if no action is taken, those vessels which currently hold a scallop entitlement on their licence but do not use it may transfer into the scallop sector as opportunities decline elsewhere without being subject to any conservation measures. This could only have a damaging impact on already vulnerable stocks.

Options

6. Five options were identified:

   • A) Do nothing and introduce no legislation;

   • B) Implement the full package of measures as they currently exist;
• C) Delay and conduct another consultation on the full package of measures;

• D) Scrap the existing package and develop a new set of proposals;

• E) Adopt a phased approach, which would:
  • (i) implement those measures which are fully developed;
  • (ii) consult further on the technical details of dredge specification and conduct a study into the weekend ban; then implement the measures depending on the results of the study and consultation;
  • (iv) working closely with stakeholders, develop a long-term management strategy for the scallop fishery to either augment or replace the short-term measures.

Equity and Fairness

7. Each of the above options would apply equally to all British fishing vessels in the Scottish zone with a scallop entitlement on their fishing licence. There is no option which is obviously more or less fair and equitable than any of the others.

Benefits

8. Option A: The latest scientific advice has demonstrated that the health of Scottish scallop stocks gives cause for concern. To take no action to protect the stocks would be irresponsible and could precipitate further stock decline which would, in the longer term, be very damaging to the scallop sector.

9. Option B: This would implement a full range of measures to protect the scallop stocks (dredge limits, weekend ban in a restricted area plus other detailed technical measures). However, the Executive accepts that there are concerns about the financial implications of the weekend ban which requires to be fully assessed before taking a decision to introduce a ban. Some of the technical details of dredge specification can also be improved but these improvements require further discussion with industry experts.

10. Option C: The scallop stocks remain in need of protection and the latest scientific advice clearly advises that the measures should not be delayed any further. The Executive has been in close contact with the scallop sector on this issue and is well aware of the views and arguments on all sides. A re-consultation would also be unlikely to yield any new information that we are not aware of, and post consultation, the position would almost certainly be the same. In the meantime, protective measures would have been delayed a few extra months to the detriment of the condition of the scallop stocks.

11. Option D: Given the current divisions in the industry there is a reasonable case for convening a group of the major players and devising new proposals from scratch. However, the process of developing proposals has been demonstrated to be slow and this approach would delay any protection for the stocks even further than Option C. There is also no guarantee that any new proposals could be agreed which would be better for the scallop stocks.

12. Option E: The phased approach includes some of the positive aspects of the above options. Phase one will provide immediate protection for the stocks through the dredge
and bycatch limits and the prohibition on the use of blinders. Phase two will develop the technical details further and introduce them in an amending SI as soon as possible. A study will also be conducted into the economic impact of the weekend ban before any decision is taken on whether to implement the ban. The third phase will be the development, through the Scottish Scallop Advisory Committee (SSAC) of a long-term strategy for scallop management, with a commitment to repealing or amending the SI if and when a more sophisticated strategy has been agreed.

13. The limits on the maximum number of scallop and French dredges will limit the number of dredges which can be used at any one time by a UK vessel in different parts of the Scottish zone. This is intended to limit overall catches of scallops, thus helping the stock to remain within sustainable levels and also to limit the damage dredges cause to the sea bed. The 20% bycatch limit of king scallops should prevent vessels targeting queen scallops taking a large quantity of king scallops while remaining exempt from the conservation regulations which apply to vessels targeting king scallops. The prohibition on the use of any device liable to obstruct or diminish the dimensions of the belly rings of the dredges (so called “blinders”) should help prevent catches of undersized scallops.

Compliance Costs for Business

14. The proposed legislation mostly reflects current good practice and the industry will not be required to purchase any new fishing gear to comply with the Order.

15. The Scottish fleet is nomadic and works all around the Scottish zone and also into other UK waters. The zonal dredge limits will therefore affect different vessels in different ways. Some may find that some, but not all, of their working pattern is affected (i.e. they will need to reduce the number of dredges in some areas which they fish but not in others). Most vessels do not use more than the set limits of scallop dredges and so should not be affected. The Executive has been informed that around six vessels on the West Coast and around six vessels beyond twelve miles will be required to reduce the number of dredges they currently use. This could well lead to a corresponding reduction in income for these vessels.

Results of Consultation

16. A formal consultation on a wider range of scallop technical conservation proposals (including a weekend ban and technical aspects of dredge design) was conducted in spring 2001. The responses to the consultation were broadly in favour of the proposals.

17. Informal contacts have continued since the consultation was completed, including two full meetings with key industry representatives at which the proposals were discussed in detail. It is as a result of these meetings, that Executive decided to conduct a study into the wider implications of the weekend ban and to further develop the precise technical details of the dredge design requirements before legislating for these proposals.

Summary and Recommendations

18. The stocks remain in a serious condition and action is needed to help protect them without further delay. This Order will introduce some core measures now and permit the
introduction of additional complementary measures once they have been further developed and their implications fully considered.

Enforcement, Sanctions, Monitoring and Review

19. The Scottish Fisheries Protection Agency will undertake enforcement. The regulation will be monitored and reviewed in the context of the development of a long-term strategy for management of the scallop sector. As part of this, a review of the Regulatory Impact Assessment will also be conducted by 30 June 2005 by which time it should be possible to ascertain the actual impact of the Order.

DECLARATION:

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

Signed by the Responsible Minister: 

Date of Regulatory Impact Assessment: July 2003

SEERAD: Sea Fisheries Division
July 2003
9 September 2003

The Clerk
Environment & Rural Development Committee
Scottish Parliament
EDINBURGH

Dear Ms Hawe

The Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371)

I am Managing Director of Sco-Bere Seafoods Ltd in Peterhead. Several of the vessels affected by the above SSI land to my factory which is mainly involved in scallop processing.

The measures mean we would be denied product which we require to service our contractual obligations to our customers. The knock-on effect will inevitably lead to the issue of redundancy notices to staff. Other scallop processors in Scotland whom I have to spoken to would be similarly affected.

The measures lack rationality and are illogical and discriminatory in their application.

Yours sincerely

[Signature]

Foster Gault
Managing Director
It has come to my attention that the Regulatory Impact Assessment for the Prohibition on Fishing for Scallops (Scotland) Order 2003 was not laid in Parliament at the same time as the SSI.

I apologise unreservedly for this administrative oversight. By way of explanation, the timing of the laying of the SSI coincided with a change of personnel in my Department, and the RIA was accidentally omitted from the package of documents usually forwarded for Parliamentary process. Since not all SSIs are accompanied by an RIA, the omission did not come to officials' attention until yesterday.

We have immediately taken to steps to rectify the situation, and have forwarded the RIA to industry members with an unreserved apology.
FS/1

06 September 2003

Ms Sarah Boyack
Convener
Rural Development Committee
The Scottish Parliament
EDINBURGH EH99 1SP

Dear Ms Boyack

Scallop Technical Conservation Measures
Draft SSI

I understand that the Rural Development Committee is to have a debate on Wednesday next concerning the Executive's proposals for technical conservation measures in the Scottish scallop fishery.

I write on behalf of Scottish inshore scallop and other fishermen who are strongly in favour of the introduction of the measures. To avoid any accusation that the approval is confined solely to members of this Association, please be good enough to see enclosed the relevant part of the text of a letter, to be sent to the Minister for the Environment and Rural Affairs, agreed by the Secretaries of the therein-named Associations on Wednesday last.

I understand opposition to the measures is being mounted by the Mallaig and Northwest Fishermen's and Scallop Associations on the basis of the disadvantage that will be suffered, it is alleged, by the highest powered industrial scallop fishing vessels in Scotland.

What is being proposed in Scotland is not new in the United Kingdom. Technical measures are already in place in Northern Ireland and the Isle of Man to protect this sessile and highly vulnerable stock. Similar measures are to be introduced in England and Wales. No other major shellfish stock in Scotland is in want of legislative protection.

Much complaint is made that certain scallop vessels require to tow more gear than that which will be permitted, if the measures become law, in order to make a reasonable return. Whether or not that is true, it is not an argument for conservation.
In any event, the decisions to invest in these vessels and/or a more extensive gear spread were made after some or all of the following events occurred:

1998 Clyde and Mallaig Associations agree to promote technical conservation measures limiting the number of dredges which can be towed by scallop fishing vessels

Scottish Fishermen’s Federation adopts the proposals and recommends them to Government

1999 Scallop subgroup (representing all major UK scallop fishing interests) of UK Fisheries Conservation Group endorses technical conservation proposals which are identical to those contained in the current draft SSI

Scottish fishing industry formally consulted on proposals.

_It is understood that no objection to the technical conservation measures was received._

2001 First Draft SSI published.

_It is understood that no objection to the technical conservation measures was received._

Official stock assessments show scallop stocks are less good state than they were in 1998.

If the Scottish Parliament turns its back now on introducing measures to protect these stocks, its first real opportunity to make its contribution to the conservation of Scottish inshore fisheries since Devolution, then Scottish inshore fishermen can have little optimism for their future.

Yours sincerely

[Signature]

PLM Stewart
Secretary
[Date]

Ross Finnie, Esq., MSP.,
Minister for the Environment
and Rural Affairs

Dear Minister,

Scottish Inshore Fisheries Management,
Scallop Technical Conservation Measures.

We the undersigned represent Associations in Scotland having, to a greater or lesser extent, an interest in the effective management of fisheries in Scottish inshore waters. We are all co-operating, through the medium of SIFAG, with the Executive in a partnership approach to achieve that end.

It is entirely possible that this radical initiative would be stopped in its tracks if the Executive decided that its conservation approach to the management of scallops were to be abandoned. The reason is that some or all of us could come to the conclusion that notwithstanding the needs of stock conservation and the small coastal communities directly dependent on those stocks, unfettered commercial considerations would always have primacy.

The Associations support unanimously the dredge limitation measures contained in the currently laid draft SSI.

The Associations note that such measures have been in force through legislation, in the Isle of Man and Northern Ireland and, through a Regulating Order, in the Shetland Islands, for some time. In each of these cases not only are the measures of benefit to the stock but are supported by the indigenous fishermen.
The Associations therefore urge the Minister to disregard the opposition to the measures which appears to be stimulated more by mercantile than conservation motives and to proceed swiftly to achieve their introduction.

Yours faithfully,

Alan Coghill
Secretary, Orkney Fisheries Association

Hansen Black
Secretary, Shetland Fishermen’s Association

Duncan MacInnes
Secretary, Western Isles Fishermen’s Association

Patrick Stewart
Secretary, Clyde Fishermen’s Association
Ms Tracey Hawe
The Clerk
Environment & Rural Development Committee
Scottish Parliament
EDINBURGH

Dear Ms Hawe

The Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371)

I am a scallop fisherman and boat owner from Mull and a member of Clyde Fishermen's Association (CFA). Could you please pass this letter onto members of your committee who will be debating the above named regulations.

I disagree strongly with the stance of the CFA on this matter and believe that such a measure will suit only a small number of vessels who will not be affected by the measure.

Yours sincerely

[Signature]

Alastair Maclean

8th September 2003
The Clerk
Environment & Rural Development Committee
Scottish Parliament
EDINBURGH

Dear Ms Hawe

The Prohibition of Fishing for Scallops (Scotland) Order 2003 (SSI 2003/371)

I am a scallop fisherman and boat owner from Mull and a member of Clyde Fishermen's Association (CFA). Could you please pass this letter onto members of your committee who will be debating the above named regulations.

I disagree strongly with the stance of the CFA on this matter and believe that such a measure will suit only a small number of vessels who will not be affected by the measures.

I am of the opinion that the regulations will render my vessel unviable and make me bankrupt.

Yours sincerely,

Paul Gallagher

8th September 2003
Dear Members of the Environment and Rural Development Committee,

I understand that the Committee will consider the Prohibition of Fishing for Scallops (Scotland) Order 2003 on 10th September. I though it may help to let you have Highland Council’s views on the Order.

Highland Council is aware of recent stock assessments undertaken by the FRS Marine Laboratory Aberdeen and feels that they confirm the need to implement measures designed to conserve scallop stocks.

The Council has campaigned for technical conservation measures in the scallop fishery for a number of years now and has fully supported the Executive’s proposals for their implementation. The Council continues to support the introduction of technical conservation measures for scallops and the Executive’s Prohibition Order now before you.

In proposing the Order, the Executive further committed itself to the implementation of minimum belly ring sizes and tooth spacing, reconsideration of (and an impacts assessment of) previously proposed weekend closures in order to test their validity now and, to develop, with the industry and scientists, a strategic approach to the future management of scallop stocks. Such an approach is, in the Council’s view, to be commended.

Recognising the need to implement technical conservation measures quickly to safeguard scallop stocks, the Executive’s Order allows time to consider less urgent closure proposals and future management arrangements, linked to the review of inshore fisheries management. Highland Council supports this approach.

George Hamilton
Fisheries Development Manager
Highland Council
Planning and Development Service
Glenurquhart Road
Inverness
IV3 5NX
1. At its meeting on 2nd September 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   The Welfare of Farmed Animals (Scotland) Amendment Regulations 2003 (in draft)
   SSI 2003/371
   SE 2003/175

Draft instrument subject to approval

The Welfare of Farmed Animals (Scotland) Regulations 2003 (draft)

Background
1. The Committee raised three points on this instrument with the Executive.

Question 1
2. The Committee noted that the Directives implemented by these Regulations should have been implemented by 1 January 2003 and asked for the Executive's comments on the delay.

Answer 1
3. In its response, reproduced at Appendix 4, the Executive states that its view is that, simply by virtue of being late, the implementation measure (which in itself is within devolved competence) does not become ultra vires. The matter has been the subject of correspondence between the Committee and the Executive on previous occasions during the first session of the Parliament, notably in relation to the Specified Risk Material Amendment (No.2) (Scotland) Regulations 2001 (SSI 2001/86), the Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2001 (SSI 2001/104), and the Bluetongue (Scotland) Order 2003 (SSI 2003/91).

Report 1
4. As the Executive mentions, this issue has arisen before. In the Committee’s view, the difficulty lies in section 57(2) of the Scotland Act and how that section is to be interpreted in relation to Community law particularly following the decision of the Privy Council in the case of R v the Lord Advocate in December last year.

5. [MM1] It may well be possible to distinguish between late implementation and the decision in R. The facts are very different.
6. The Committee observes that the full implications of R, especially in relation to Community law, have yet to be explored and Executive’s analysis of the position may be correct. But until the point is resolved by the courts, it seems to the Committee that a doubt remains as to whether the Regulations are intra vires and in so far as they fail to comply with Community law may raise a devolution issue. The Committee therefore draws the Regulations to the attention of the Parliament and the lead committee on those grounds.

Question 2
7. The Annex to the principal Council Directive permitted tethers to be used provided that they did not cause injury to the pigs and were inspected regularly etc. However, that Annex was substituted by Directive 2001/93, which removed the tethering provisions. Instead, Directive 2001/88 now provides that (i) the construction of installations in which pigs are tethered is prohibited and (ii) as from 1 January 2006, the use of tethers is to be prohibited. The Committee noted that this did not seem to be reflected by the relevant provisions of the Regulations; namely, paragraphs 4 and 5 of the Schedule, which appeared still to follow the principal Directive as unamended. The Committee asked for comment.

Answer 2
8. The Committee noted that paragraph 3 of Article 3 of 1991/630/EEC (as amended by Directive 2001/88/EC) did not appear to be reflected in the relevant provisions in the draft Regulations. Paragraph 3 contains two elements. Firstly, there is a provision to the effect that ‘the construction of or conversion to installations in which sows and gilts are tethered is prohibited’.

9. It appeared to the Executive that it would have been unsatisfactory to frame a provision directed against the construction/conversion of an installation in which sows and gilts are tethered. This implies that, if a building is constructed for a quite different purpose but a sow or gilt is tethered there, an offence is committed. If the provision is read as prohibiting the construction of an installation in which sows and gilts can be tethered other difficulties arise. Almost any installation can be used to tether an animal if there is a fixed point to which the tether can be secured - a slat, a door handle, a feeding bin, etc. Thus, the Executive takes the view that paragraphs 4 and 5 of Schedule 6 to the draft Regulations, which prohibit the tethering of all pigs (including, therefore, sows and gilts) except under controlled circumstances, sufficiently implement the purpose of the provision.

10. Secondly, paragraph 3 of Article 3 (as amended) provides that from 1 January 2006 the use of tethers for sows and gilts is to be prohibited. Because this provision does not have effect until 1 January 2006, no practical consequences arise from the prohibition not being at present in place. The Executive will bring forward implementation Regulations for that purpose, nearer the time.

Report 2
11. The Executive’s arguments appear reasonable to the Committee and it therefore draws the attention of the lead committee and the Parliament to them as providing the explanation requested.
Question 3
12. Paragraph 7(1) of Schedule 6 makes provision for the dimension of any stall or pen used for holding individual pigs. The internal area of such pens was not to be less than the square of the length of the pig and no internal side was to be less than 75% of the length of the pig. The Committee noted that there was no analogous provision in the Directives, which simply provided that pigs in individual pens must be able to turn around easily. The Committee asked for a reassurance that the provisions of the Regulations accurately reflect the requirements of the Directive.

Answer 3
13. The requirement specifying dimensions for stalls and pens in the Order represents a practical interpretation of the provisions in the Directive which specify that a pig must be able to turn round easily. The Executive considers that the formula set out in the Regulations will, if applied to the construction of such stalls and pens, ensure that any pig so accommodated will always be able to turn round and that the formula will be of benefit to pig farmers in providing a clear and consistent standard. The provision in the new Regulations repeats the provisions currently in force, in terms of paragraph 5 of Schedule 6 to the Welfare of Farmed Animals (Scotland) Regulations 2000 with which pig farmers are familiar and the pig industry seems content.

Report 3
14. The Committee welcomes the Executive’s assurances and notes that any further discussion of the adequacy of the Regulations perhaps falls more to the lead committee than this Committee. The Committee therefore draws the Executive’s response to the attention of the lead committee and the Parliament for information.

Instruments subject to annulment

The Feeding Stuffs (Scotland) Amendment (No.2) Regulations 2003 (SSI 2003/312)

Background
15. The Committee raised one general and one specific point in connection with the instrument. The Executive was asked to comment.

16. The Committee noted that the Regulations breach the 21-day rule and that whilst the FSA indicated regret at the breach it failed to provide an explanation for it.

17. The Executive was asked for a view on the Committee’s perception that, both on issues such as the foregoing and other associated matters on which the Committee since it was reformed has sought reactions; the attitude of the FSA has been somewhat dismissive of the Committee’s clearly expressed concerns. This is a development that the Committee does not welcome.

Response
18. In its reply at Appendix 6, the Food Standards Agency responds very fully. It expresses its own concerns that the Committee should feel that the Agency was in
any way dismissive of the Committee’s views and explains that the Committee’s fears in this respect are unfounded.

19. The Agency provides background on its organisation and relationship with the Executive. It also indicates that it tries constantly to improve the way it interacts with all stakeholders and offers to discuss the wider concerns of the Committee with it.

20. In relation to the breach of the 21-day rule, the Agency gives a brief background to the making of the Regulations. It explains the need to implement the relevant EC legislation timeously and also explains that the progress of the Regulations was delayed by the drafting of the Regulatory Impact Assessment and the need to ensure that the requirements of the Directives were uniformly applied throughout the UK.

Report

21. The Committee is grateful for the Agency’s response and, as noted above, is pleased to take up the offer of discussions.

22. The Committee agrees with its predecessor on the need for the Directives to apply uniformly throughout the UK. However, this is not, in itself, sufficient reason for breach of the 21-day rule in Scotland for which no other reason has been given. It remains possible, in the Committee’s view, that the need for uniformity throughout the UK may have had implications for sufficient notice being taken of the Scottish parliamentary timetable. It therefore draws this point to the attention of the lead Committee and the Parliament. The Committee will return to the matter in discussion with the Agency.
Appendix 4

THE WELFARE OF FARMED ANIMALS (SCOTLAND) REGULATIONS 2003, (draft)

1. On 24 June, the Subordinate Legislation Committee considered the above instrument and requested an explanation of the following matters.

2. The Committee noted that the Directives implemented by these Regulations should have been implemented by 1 January 2003 and requested the Executive's views on this delay.

3. The Committee indicated that it was aware that the Annex to the principal Council Directive permitted tethers to be used provided that they did not cause injury to the pigs and were inspected regularly etc. However, that Annex was substituted by Directive 2001/93, which removed the tethering provisions. Instead, Directive 2001/88 now provided that (i) the construction of installations in which pigs are tethered is prohibited and (ii) as from 1 January 2006, the use of tethers is to be prohibited. The Committee noted that this did not seem to be reflected by the relevant provisions of the Regulations; namely, paragraphs 4 and 5 of the Schedule, which appeared still to follow the principal Directive as unamended. The Committee asked for comment.

4. The Committee noted that Paragraph 7(1) of Schedule 6 made provision for the dimension of any stall or pen used for holding individual pigs. The internal area of such pens was not to be less than the square of the length of the pig and no internal side was to be less than 75% of the length of the pig. The Committee noted that there was no analogous provision in the Directives, which simply provided that pigs in individual pens must be able to turn around easily. The Committee asked for a reassurance that the provisions of the Regulations accurately reflected the requirements of the Directive.

The Scottish Executive Environment and Rural Affairs Department responds as follows:-

The view of the Executive is that, simply by virtue of being late, the implementation measure (which in itself is within devolved competence) does not become ultra vires. This matter has been the subject of correspondence between the Committee and the Executive on previous occasions during the first session of the Parliament, notably in relation to the Specified Risk Material Amendment (No 2) (Scotland) Regulations 2001 (SSI 2001/86), the Feeding Stuffs (Sampling and Analysis) Amendment (Scotland) Regulations 2001(SSI 2001/104), and the Bluetongue (Scotland) Order 2003 (SSI 2003/91).

5. The Committee noted that paragraph 3 of Article 3 of 1991/630/EEC (as amended by Directive 2001/88/EC) did not appear to be reflected in the relevant provisions in the draft Regulations. Paragraph 3 contains two elements. Firstly, there is a provision to the effect that ‘the construction of or conversion to installations in which sows and gilts are tethered is prohibited’. It appeared to the Executive that it would have been unsatisfactory to frame a provision directed against the
construction/conversion of an installation in which sows and gilts are tethered. This implies that if a building is constructed for a quite different purpose, but a sow or a gilt is tethered there, an offence is committed. If the provision is read as prohibiting the construction of an installation in which sows and gilts can be tethered other difficulties arise. Almost any installation can be used to tether an animal, if there is a fixed point to which the tether can be secured - a slat, a doorhandle, a feeding bin, etc. Thus, the Executive take the view that paragraphs 4 and 5 of Schedule 6 to the draft Regulations, which prohibit the tethering of all pigs (including, therefore, sows and gilts) except under controlled circumstances, sufficiently implement the purpose of the provision.

6. Secondly, paragraph 3 of Article 3 (as amended) provides that from 1 January 2006 the use of tethers for sows and gilts is to be prohibited. Because this provision does not have effect until 1 January 2006, no practical consequences arise from the prohibition not being at present in place. The Executive will bring forward implementation Regulations for that purpose, nearer the time.

7. The requirement specifying dimensions for stalls and pens in the Order represents a practical interpretation of the provisions in the Directive which specify that a pig must be able to turn round easily. The Executive considers that the formula set out in the Regulations will, if applied to the construction of such stalls and pens, ensure that any pig so accommodated will always be able to turn round, and that the formula will be of benefit to pig farmers in providing a clear and consistent standard. The provision in the new Regulations repeats the provisions currently in force, in terms of paragraph 5 of Schedule 6 to the Welfare of Farmed Animals (Scotland) Regulations 2000, with which pig farmers are familiar, and the pig industry seems content.

Environment and Rural Affairs Department
Scottish Executive
27 June 2033
Appendix 6

THE FEEDING STUFFS (SCOTLAND) AMENDMENT (NO.2) REGULATIONS 2003 (SSI 2003/312)

In its letter of 24 June to Catherine Hodgson the Subordinate Legislation Committee commented as follows -

“1. The Committee notes that the Regulations breach the 21-day rule and that while the FSA indicate regret at the breach they fail to provide an explanation of the reason.

2. Can the Executive give a view on the Committee's perception that, both on issues such as the foregoing and other associated matters on which the Committee since it was reformed has sought reactions, the attitude of the FSA has been somewhat dismissive to the Committee's clearly expressed concerns. This is a development not welcomed by the Committee.”

The Food Standards Agency responds as follows:

The Food Standards Agency Scotland is most concerned that the Subordinate Legislation Committee (SLC) perceives the Agency as being in any way “ dismissive” of its views. The Agency wishes to respond in the first instance to the more general concern set out in the Committee's Official Report (Meeting 3/2003) in order to reassure the Committee of the Agency's commitment to meet all requirements of the legislative process in Scotland.

It might be helpful for the Committee to be aware that the Food Standards Agency is a non-Ministerial department of the United Kingdom government responsible for advising the Scottish Ministers, as well as Ministers in England, Wales and Northern Ireland, in relation to food safety and standards issues. The majority of food issues are devolved and, in recognition of this, policy development and presentation of related legislation to the Scottish Ministers is handled by the Agency's office in Aberdeen (Food Standards Agency Scotland). It is therefore considered appropriate (by the Executive and the Agency) that the Agency, rather than the Executive, responds directly to points raised by the Committee.

The Agency fully agrees with the Committee that all legislation presented to them should be in a form which allows the Parliament to consider the legislative effects fully.

FSA Scotland officials are advised on legal issues by the Office of the Solicitor to the Scottish Executive (OSSE) and together consider all EC and domestic legal requirements in order to advise the Scottish Ministers on matters of food law. The Agency would like to reassure the Committee that it does have regard to all legislative issues and points of best practice raised by the SLC and, taking legal advice from OSSE, ensures that all comments and concerns are fully considered. That the Committee consider that the Agency has failed to take their considered views on board is a matter of great regret and the Agency wishes to reassure the
Committee of its commitment to continuous improvement of its processes and approach to the legislative process. In relation to the format of the Scottish legislation that the Agency presents, every effort is made to ensure that it is consistent with Scottish Executive practice. In particular, the Agency attempts to ensure, where necessary and practicable, that full information such as transposition tables can be provided to support the legislation.

The Agency is guided in its functions by principles of openness and transparency in the way it makes policy and brings forward legislation. This is evidenced through open meetings of its independent Board, where decisions on major policy issues are developed and agreed in public. In Scotland, the Agency continually seeks to improve the way it does business and interacts with all stakeholders: including consumers, industry groups, enforcement bodies, and of course, other government departments. As part of this aim, the Agency seeks on all occasions to meet the consultation requirements of open and broad circulation to interested parties and a consideration period of 12 weeks. If the Committee considers it would be helpful, the Agency is very willing to discuss the wider concerns of the Committee with it.

The Agency responds the Committee’s comments on the breach of the 21 day rule as follows.

In addition to the need for safeguarding public and animal health by implementing the provisions of Directives 2002/32/EC and 2002/2/EC, the Agency has required to recognise the need to implement the provisions of these Directives on time. The relevant dates for implementation are 1st August 2003 in relation to regulations 1 to 4 and 6, 7 and 9 (implementing Directive 2002/32); and 6th November 2003 in relation to regulations 5, 8 and 10 (implementing Directive 2002/2). The Agency recognises that it is incumbent on the Scottish Ministers to give effect to those requirements in order to comply with their broader obligations in relation to Community law. In addition, however, failure to do so would result in closing the European export market to feed manufacturers in Scotland and also render the UK liable to infraction proceedings before the European Court of Justice.

The progress of Regulations to implement the EC Directives was delayed, late on in the drafting process, because Agency officials needed to substantially revise the accompanying Regulatory Impact Assessment to ensure that it fully reflected the impact of provisions contained in the Directives on animal feed producers across the UK. This involved detailed discussions between departments and within the Agency in relation to the cost benefit analysis and prevented the Regulations being laid before the Scottish Parliament at an earlier stage as originally intended. They were however laid as soon as practicable after the finalisation of the Regulatory Impact Assessment.

The Agency hopes that this fuller explanation of the circumstances will assist the Committee in understanding why the 21 day rule was not complied with in this case.

**Food Standards Agency**

June 2003
Affirmative procedure
1. There are various kinds of affirmative instrument but all require Parliament’s approval by motion. Before a motion in the Chamber, however, an affirmative must secure a recommendation of approval by the lead committee. This motion is first lodged at the Chamber Desk and then moved in committee by the Minister in charge of the instrument, at a meeting of the lead committee. If that motion is successful, the Parliamentary Bureau then puts a motion before the Parliament for the instrument to be approved.

Affirmative instruments in committee
2. The lead committee for an affirmative instrument needs to report its recommendations to the Parliament. Any member of the Executive or Scottish Minister may by motion propose to the committee that it recommend that the instrument be approved (Rule 10.6.2). The Deputy Minister for Environment and Rural Development will be present at the Committee meeting to move Motions S2M-190, S2M-232 and S2M-189 recommending approval of these three affirmative instruments.

3. The discussion will begin with an opportunity for members to answer any factual questions or ask for clarification, whilst officials are seated at the table with the Minister. The Committee will then move on to formally debate the motion.

4. The Deputy Minister will be asked to move the motion to open the debate. The debate is limited to 90 minutes (Rule 10.6.3). Any member of the lead committee may speak against the motion to recommend approval of the instrument. A member of the Parliament who is not a member of the lead committee may attend the meeting of the lead committee and may speak in the debate if invited to do so by the Convener but may not vote (Rule 12.2.2).

5. If the lead committee then recommends approval of the instrument the Bureau will propose by motion that the Parliament approve the instrument. Standing Orders provide for only a very restricted debate on the motion in the Chamber (Rule 10.6.5), envisaging that the lead committee will have provided the main opportunity for debate.
ENVIRONMENT AND RURAL DEVELOPMENT COMMITTEE

Consideration of Current Petitions

1. At its meeting on 25 June 2003 the Committee agreed not to consider any relevant petitions remaining from predecessor committees during the first session until they were formally re-referred by the Public Petitions Committee.

2. That Committee has now been re-referred 8 such petitions, along with one new petition referral. On 3 September 2003 the Committee agreed that petitions PE541 and 543 on landfill sites would be considered as part of the inquiry into the National Waste Plan, and agreed to take evidence from the petitioners at its meeting on 24 September.

3. Options for consideration of all other outstanding petitions follow. The Committee is invited to consider its approach to each.

Sarah Boyack MSP
Convener
PETITION PE246

Petition by Kildaton and Oa Community Council, Kilarrow and Kilmeny Community Council and the Kilchoman and Partnahaven Council, and Councillors J Findlay and R Currie, calling for the Scottish Parliament to request Scottish Natural Heritage, the Scottish Executive and the Scottish Ministers, as appropriate not to proceed with the designation of the South-East Islay Skerries Special Area of Conservation.

Progress of the Petition
1. On 12 September 2000 the Public Petitions Committee (PPC) agreed to copy the petition to the Minister for Transport and Environment asking for the petition to be considered as part of its consultation process on the South-East Islay Skerries Special Area of Conservation (SAC).

2. On 24 October 2000 the PPC agreed to pass a copy of a letter received from Scottish Natural Heritage (SNH) to the Scottish Executive requesting that it inform the Committee of the outcome of the consultation on the SAC designation. The Committee also agreed to seek the Minister for Transport and Environment's views on various issues raised by members during the meeting.

3. Following further correspondence with the Scottish Executive on points raised by members, the PPC agreed on 27 March 2001 to pass a copy of the petition and associated correspondence to the European Committee and seek its views on whether there should be a right of appeal against designation of a SAC and on how the views of local communities can be taken into account during the designation process.

4. On 11 September 2001 the European Committee agreed that, in the light of a letter from the Scottish Executive outlining the reasons for designation in advance of any deliberations from them, no further action could be taken in respect of this Petition.

5. On 21 May 2002 the PPC agreed to link and further consider petition PE246 with related petitions PE462, 463 and 464.

6. Following evidence from SNH, and the Advisory Committee on Sites of Special Scientific Interest (ACSSSI) and further written evidence from the Scottish Executive, on 25 June 2003 the PPC agreed to refer petition PE246 to the Environment and Rural Development Committee for further consideration. The Environment and Rural Development Committee is required to consider the petition, although members may wish to note that the area of South-East Islay Skerries has now been designated a SAC.

Options for action
The Committee is invited to consider how it wishes to deal with this petition.

Option A
7. The Committee has the option to decide that the petition does not merit further consideration. In this case, the Committee is invited to conclude
the petition by noting it, and passing to the petitioner a copy of the *Official Report* of the Committee discussion.

**Option B**
8. The Committee may agree to accept the referral and to conclude the petition, but to write to Scottish Natural Heritage expressing any relevant concerns.

**Option C**
9. The Committee may consider that there is little that it can do in respect of the petitioners’ request not to proceed with the designation of the area as an SAC, as the designation has now been made. However, the Committee may decide to refer the petition back to the PPC to consider any issues of general principle raised.

**Option D**
10. Again, the Committee may consider that there is little that it can do in respect of the petitioners’ request not to proceed with the designation of the area as an SAC. However, the Committee may decide to accept the referral and take any issues of general principle raised by the petition into account as part of Stage 1 scrutiny of the Nature Conservation (Scotland) Bill.
PETITION PE365

PE365  Petition by Mr Iain MacSween on behalf of the Scottish Fishermen’s Organisation Limited, calling for the Scottish Parliament to review Fixed Quota Allocations which incorporate the track records of fishing vessels with a view to ascertaining with whom the property rights to Scotland’s fish stocks lie, and take appropriate action to ensure that the fish stocks that are currently under the jurisdiction of the Scottish Parliament are not sold to owners whose main place of business is outwith the UK.

Within the UK Fixed Quota Allocations (FQAs) are used to allocate fishing quota to licence-holders via sectoral producer organisations, allocating each vessel owner a fixed share of the UK quota. When this system was introduced Ministers stated that there was to be no trade in these quota shares. Despite this assurance, a grey market appears to have developed with fishermen who can afford to do so buying or leasing additional quota. In the decommissioning schemes of recent years this confusion has increased. When a boat is decommissioned, the licence-holder gives up the fishing licence but is not required to return the quota and may therefore dispose of it. The petitioner is concerned that the development of this grey market leads to a system of ‘Individual Transferable Quotas’. This would effectively make quota a property right for licence-holders, with the risk that quota will increasingly be traded and end up concentrated in the hands of fewer big owners. The petitioner is particularly concerned that this may result in quota (i.e. access to fishing) being lost to Scottish or UK owners, undermining fisheries-dependent communities.

Progress of the Petition

1. On 22 May 2001 the Public Petitions Committee (PPC) heard evidence from the petitioner, agreed to seek the views of the Scottish Executive on the issues raised in the petition and to pass the petition to the European Committee for information only.

2. On 19 June 2001 the PPC considered a response from the Scottish Executive and agreed to refer the petition and associated correspondence formally to the European Committee, drawing its attention to members’ comments and also with the recommendation that it seek the views of the Rural Development Committee as appropriate.

3. On 19 June 2001 the European Committee noted the petition and agreed to defer further discussion until the information sought by the PPC from the Scottish Executive had been received and agreed to ask the petitioner for a definition of "property rights" as outlined in the petition.

4. On 11 September 2001 the European Committee noted that no response had been made by the petitioner to an inquiry from the Clerk seeking more information. The Committee agreed no further action could be taken until a satisfactory response was received.
5. Further information was subsequently received, and on 12 February 2002 the European Committee agreed to forward the petition to one of the Parliament's Justice Committees in respect of the definition of property rights.

6. On 4 March 2003 the Justice 2 Committee agreed to refer the petition back to the PPC with the recommendation that it be considered by a relevant subject committee in the new parliamentary session.

7. The petition has now been re-referred by the PPC to the Environment and Rural Development Committee for consideration.

Background information

8. Members may wish to note that the Rural Development Committee considered some related issues in the course of its *Inquiry into Current Issues Facing the Scottish Fishing Industry* in early 2003. The Committee was concerned that quota entitlement should not be lost to Scotland when boats were being decommissioned, and noted initiatives by Shetland Islands Council to attempt to purchase quota for the use of their community. In its report the Committee urged the Scottish Executive to watch the European Commission’s state aid inquiry into the Shetland Islands Council scheme carefully and “to seek rigorous analysis of this and other opportunities which may offer the recovery and retention of quota for the industry”.

9. The European Commission subsequently decided that the scheme must be amended to comply with state aid rules, and the Council is currently exploring its options. In its response to the Committee’s Report, the Scottish Executive noted that officials were working on this with the Council. However, the response does not mention any wider Executive initiatives or work to explore other options for retaining quota for the Scottish industry.

Options for further action

10. The Committee is invited to consider the options for action outlined below or take any other competent action that it deems appropriate.

Option A
11. The Committee may consider that the issues are being adequately explored by the Executive in the context of current developments in fisheries. In that case the Committee may wish to conclude the petition by noting it, and passing to the petitioner a copy of the *Official Report* of the Committee discussion.

Option B
12. The Committee may wish to write to the Minister seeking further details of any ongoing work to explore issues relating to quota ownership, and
tradeability, particularly in the light of current decommissioning and restrictions on fishing opportunities.

**Option C**

13. The Committee may wish to appoint a reporter to investigate the issues raised by the petition and report back to the Committee with recommendations for any further action.
PETITIONS PE462, PE463 AND PE464

PE462 Petition by Mrs Margie Currie, calling for the Scottish Parliament to ask Scottish Natural Heritage (a) to provide the original data sheets for all alleged hen harrier sites on Arran for the purpose of verification and (b) to give details of the changes in data collection and presentation procedures which it proposes for all Site of Special Scientific Interest (SSSI) designations in future to ensure adequate corroboration.

PE463 Petition by Councillor Donald Manford, calling for the Scottish Parliament (a) to ask Scottish Natural Heritage why it allegedly published erroneous information about local public opinion on the Sound of Barra consultation that it carried out for the Scottish Executive and (b) to verify that SNH’s general procedures for consultations of this sort comply with the duty imposed on it by Sections 3(1)(e) and (f) of the Natural Heritage (Scotland) Act.

PE464 Petition by Robert Cunyngham Brown, calling for the Scottish Parliament to ask Scottish Natural Heritage to provide (a) scientific justification for the list of raingoose Special Protection Areas it has classified or is in the process of classifying and (b) details of the measures it took when compiling that list, to satisfy the statutory duty to take account of the interests of landowners, crofters and local communities.

Progress of the Petitions

1. The petitions were initially considered on 26 February 2002 by the Public Petitions Committee (PPC) which took evidence from the petitioners, SNH, and the Advisory Committee on Sites of Special Scientific Interest (ACSSSI) and considered further written evidence from the Scottish Executive.

2. In February 2003 the PPC agreed to refer the petitions to the Transport and the Environment Committee (T&E) with the request that the petitions be considered together due to similarities in subject matter, and that T&E take a view as to whether its successor committee should be invited to consider conducting a review of SNH’s consultation procedures and extending the remit of the ACSSSI to cover appeals on the scientific validity of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).

3. At its meeting on 18 March 2003 T&E agreed to refer the petitions back to the PPC on the grounds that a suitable opportunity to consider the issues raised by the petitions was likely to arise as part of the scrutiny of the Nature Conservation Bill.

Further action

4. The Nature Conservation (Scotland) Bill is expected to be introduced around the end of September. When it is introduced, the Committee will be invited to consider its approach to consideration of the general principles at
Stage 1. The Committee is invited to consider whether the issues raised by PE462, 463 and 464 on designation of Sites of Special Scientific Interest could be considered as part of Stage 1 scrutiny of the Bill.
PETITION PE517

Introduction

1. The petition by Mr Rob Kirkwood expresses concern that local authorities appear to be able to allow water treatment plants to operate outwith the terms of existing environmental protection and planning legislation. The petitioner calls for the Scottish Parliament to investigate this situation.

2. The petitioner also calls for the Parliament to investigate possible solutions to the problem of noxious odours and airborne bacteria released from such plants. The petitioner suggests covered conical shaped tanks positioned far away from residential communities as a possible solution.

3. The petitioner is specifically concerned with sewage processing at the Seafield Water Treatment Plant in the Leith Links area of Edinburgh. The petitioner is concerned that the odours and gases from this plant are having a detrimental impact on the health and quality of life of nearby communities.

Background

4. This petition was considered by the Transport and the Environment Committee in the previous parliamentary session. At its meeting on 8 January 2003, the Committee agreed to write to the Minister for Environment and Rural Development to seek his view on a number of issues arising from the petition including the effectiveness of the current system for regulating odour nuisance from water treatment plants.

5. The response, attached at Annex A, acknowledges that circumstances can arise in which measures to control odour nuisance prove not to be effective or appropriate.

6. The response also notes that in England and Wales, a recent court decision ruled that local authorities could be prevented from taking enforcement action against Water Companies that did not comply with removing offensive odour. In light of this decision, the Department for Environment Food and Rural Affairs (Defra) issued a consultation on alternative approaches for dealing with odour nuisance from public sewers and sewage treatment works.

7. The Minister for Environment and Rural Development’s letter indicates that the court decision in England and Wales may have implications in Scotland and proposes to undertake a parallel consultation in Scotland.

8. The Transport and the Environment Committee considered the letter from the Minister at its meeting on 4 March 2003. In order to enable further consideration of the petition in the second parliamentary session, the Committee agreed to refer it back to the Public Petitions Committee for reallocation to a future committee.
Recent Developments


10. The letter notes that the court decision in England and Wales was overturned in the High Court on appeal. The High Court ruling effectively allows local authorities to take enforcement action against water companies that do not comply with removing offensive odour. The letter states that the water company involved in the court case is currently seeking an appeal to the House of Lords against the High Court ruling. The letter suggests that this final appeal process may take some months to conclude, but that the definitive decision of the House of Lords will be binding in Scots Law.

11. The letter states that, whatever the outcome of the appeal, the Executive will produce a voluntary Code of Practice to provide guidance to local authorities, the sewage industry and the public on the resolution of odour nuisance problems from sewage treatment works, and that a draft will be put out for consultation later this year.

12. Should the House of Lords overturn the decision of the High Court, the Executive has indicated that it will consult on legislative change in addition to the voluntary Code of Practice.

Options for Action

13. The Committee is invited to consider the options for action outlined below or take any other competent action that it deems appropriate.

Option A

14. Members may feel that the action proposed by the Executive represents a suitable means of addressing the petitioner’s concerns, and therefore that it would be appropriate to conclude the petition and advise the petitioner of the proposed consultation.

Option B

15. Members may wish to note the outstanding appeal which has been lodged with the House of Lords. Pending the outcome of this appeal, members may wish to write to the Minister for Environment and Rural Development requesting regular updates on any developments relating to the issues raised in the petition.

Option C

16. Alternatively, Members may wish to appoint a reporter to monitor developments and report back to the Committee.
Thank you for your letter of 21 January, following the referral to you by the Public Petitions Committee of Petition 517 from the Leith Links Residents Association. This petition related specifically to odours and airborne bacteria from waste water treatment plants.

You may be aware that Scottish Water, the Scottish Environment Protection Agency, The City of Edinburgh Council and my Department all gave detailed responses to the Public Petitions Committee last year about a number of the issues raised by this petition. Your letter develops some of the issues raised by the petition and by the PP Committee’s consideration of it, and seeks the Executive’s view on a number of specific aspects.

Four specific questions are covered in your letter and I would answer them as follows:

- What is the Executive’s understanding of the respective role for local authorities; SEPA; HSE and Scottish Water in regulating (Waste) water treatment plants in respect of odour nuisance? In the Executive’s opinion, how effective is the current regulatory system?

Local Authorities

As is described in greater detail in the section relating to the regulatory regime in England & Wales, local authorities have enforcement powers to deal with a range of statutory nuisances, including odour, under section 79 of the Environmental Protection Act 1990. Until recently, it had been assumed this would include odour nuisance from waste water treatment plants. However, as is made clear in that section, it has now been the subject of a decision in English case law, which suggests this is not the case.
Local authorities also have powers under planning legislation to impose conditions on approval of planning applications, and these could include requirements relating to odour control. Failure to comply with such conditions would constitute a breach of planning control.

SEPA

The legislative provisions for regulating odour from water treatment plants is complicated by several factors. These include the capacity of the plant, whether sludges are disposed of or recovered, and whether the sludge is imported from another plant. The respective roles of SEPA are as follows:

Certain categories of water treatment plants (e.g. those with a capacity exceeding 50 tonnes per day that import non-hazardous waste which then undergoes treatment and the resultant sludges are disposed of) will fall within the scope of the *Pollution Prevention and Control (Scotland) Regulations 2000*. In these cases SEPA would be able to impose the odour control provisions contained in the PPC Regulations.

Other water treatment plants (e.g. those with smaller capacities or those that do not dispose of sludges) will not fall within the scope of the PPC Regulations. It is the Executive’s understanding that most water treatment plants, including Seafield, do not dispose of sludges. Rather, they go for recovery under an exempt activity or in accordance with the *Sludge (Use in Agriculture) Regulations 1989*. In this case, the imported sludges would continue to be regulated under Part II of the *Environmental Protection Act 1990* which would allow SEPA to impose conditions to regulate odour emissions.

If a water treatment plant is currently regulated under Part I of the *Environmental Protection Act 1990* (IPC and LAPC controls), SEPA’s authorisation can include conditions to control odour. However, the Executive understands that no water treatment plants in Scotland currently fall within the scope of Part I.

If a water treatment plant is only regulated under the *Control of Pollution Act 1974*, only discharges to water are regulated. In that case SEPA would be unable to regulate odour. Instead, that function would fall to local authorities under statutory nuisance controls.

Waste management legislation empowers SEPA to control odour from plants treating waste but the *Controlled Waste Regulations 1992* prescribe that sewage treated within the curtilage of a sewage treatment works as an integral part of the operation of the works is not treated as industrial or commercial
waste. Consequently, SEPA does not have powers to control odour from these plants. Odour from these plants would be controlled through planning legislation or statutory nuisance legislation regulated by the local authorities.

Where sewage sludge is imported for treatment from another works it is no longer exempt from the waste categories referred to above. In the case of larger plants like Seafied, where the amount of sludge brought into the works exceeds 10,000 cubic metres per annum, there is a requirement that that part of the plant taking imported sludge must have a waste management licence under Part II of the Environmental Protection Act 1990. This licence can include conditions relating to the treatment of malodorous air from the plant such that it does not give rise to offensive odour outwith the site boundary. If the quantity of sludge brought into the works in any 12-month period does not exceed 10,000 cubic metres the activity can be registered exempt from the full waste licensing regime under the Waste Management Licensing Regulations 1994. These regulations provide that operations must not cause nuisance through odour.

In summary, SEPA has powers under the Environmental Protection Act 1990 and the PPC Regulations to control offensive odours. SEPA is unable to control odour from premises falling within the scope of the Controlled Waste Regulations 1992 or regulated under the Control of Pollution Act 1974. In these cases, SEPA relies on local authorities to exercise statutory nuisance powers to regulate odour.

HSE

Our understanding of the Health and Safety Executive’s functions are that they ensure risks to people’s health and safety from work activities are properly controlled, rather than that they have any specific role in relation to the regulation of operational matters in industry. Health and Safety legislation provides that employers have to look after the health and safety of their employees; that employees and the self-employed have to look after their own health and safety; and that all have to have regard to the health and safety of others, for example members of the public who may be affected by their activities.

Scottish Water

Scottish Water has to have regard to the conditions imposed on it by the planning authority; by the legislative provisions relating to public health and the environment; by conditions required by the environmental regulator; and in relation to its own powers to impose conditions on discharges from its business customers.

Effectiveness of Current Regulatory Regime

The regulatory regime has been explained in some detail above, and in the section below on the regulatory regime in England & Wales. There are a number of ways in which odour can be controlled. However, it seems clear
that circumstances can arise in which these measures prove not to be effective or appropriate.

- **What is the Executive’s understanding of the benefits of covering primary tanks, or the use of conical primary tanks in the (Waste) water treatment process?**

This is specifically an operational matter for Scottish Water and the water industry in general. Our understanding is that expenditure would not only involve the costs of covering tanks, but also the additional need for odour control and the difficulties of maintenance. Where tanks have been covered in Scotland, these were part of the design when built. Fitting covers after the tanks have been built is much more difficult.

- **Has the issue of responsibility for odour control been considered during the review of SEPA’s responsibilities? When will this review be concluded?**

The current Policy and Financial Management Review of SEPA has been set the task of examining the role of SEPA in relation to other bodies with responsibilities for environmental protection and regulation. We expect that the review will be concluded by the summer.

- **What is the Executive’s understanding of the regulatory regime for controlling odour nuisance in England & Wales and elsewhere in Europe?**

**England & Wales**

Odour nuisance from Sewage Treatment Works has been rising in profile both south and north of the border over the last year. It became apparent there was a gap in legislation preventing Local Authorities taking enforcement action against Water Companies that did not comply with removing offensive odour, where voluntary action between authorities had failed to resolve the situation.

This followed the English Court case of *East Riding of Yorkshire Council v Yorkshire Water Services Ltd (2001)*. This ruled that it was not Parliament’s intention to include sewage treatment works within the meaning of “premises” in Section 79 of the Environment Protection Act 1990 (EPA) – at least as far as England and Wales were concerned. Effectively, this allowed Water Companies to ignore other Local Authority abatement notices under Section 79 of EPA 1990. The context of that case explains why on 23 December 2002 DEFRA issued its consultation paper putting forward alternative approaches for dealing with odour nuisance from public sewers and sewage treatment works.

The English consultation paper presents four options for consideration. The first is to maintain the existing arrangements with the addition of a new voluntary code of practice. The other three options (which would all require
legislative change) involve bringing odour from sewage treatment works within the scope of the statutory nuisance regime of EPA 1990; the Local Air Pollution Prevention and Control Regime; or Integrated Pollution Prevention and Control (IPPC) respectively.

Although section 79 of the EPA 1990 has not been tested in a Scottish Court with regard to sewers and sewer treatment works, it is possible that similar arguments would prevail in similar circumstances.

Subsequent to DEFRA issuing their consultation on 23 December, Hounslow Council are to appeal to the High Court against the decision of the Yorkshire Court that S79 of EPA does not apply to Sewage Treatment works. That appeal is to be heard on 10 March. In view of the Appeal hearing, it has been recommended that any Scottish consultation be held back until that time. The Deputy Minister for Environment and Rural Development has agreed to a Scottish consultation after 10 March, pending the outcome of the Hounslow Council Appeal.

SE officials have agreed with DEFRA at official level that the consultant commissioned to undertake the England-only regulatory impact assessment (RIA) will as appropriate extend his contract to include Scotland. The RIA will include details of comparative regulatory regimes elsewhere in Europe.

Europe

We understand the consultant did advise verbally that his research to date showed no European country having any national legislation relating to control of sewage odour. Germany has some Federal Laws and France some Regional laws on odour under Nuisance control. By contrast, in the USA, there is no comparative legislation, and they rely entirely on private prosecutions to sue water companies.

To sum up, the Executive intend to issue a parallel consultation on this issue, pending the outcome of the Hounslow Council Court Appeal on 10 March, with a view to enhancing the guidance and legislation for remedying odour problems from sewage treatment works. This will include the commissioning of a full RIA, which will include comprehensive comparative regulatory regimes in Europe.
Dear Roz,

PE 517- SEWAGE ODOURS FROM SEAFIELD WASTE WATER TREATMENT WORKS

1. I refer to your e-mail of 24 July 2003 requesting an update on the current position, in relation to the above matter.

2. In his letter of 24 January 2003, Mr Finnie explained the background to the perceived lack of adequate enforcement measures concerning the control of odour from sewage treatment works, and that Defra had issued a consultation on this issue on 22 December 2002 following a Ministerial commitment made to the UK Parliament. Mr Finnie further advised that the Scottish Executive would also consider holding a public consultation on this matter in Scotland but this was dependent on the outcome of an appeal by the London Borough of Hounslow Council lodged on 15 January 2003, in a case concerning the non-applicability of abatement notices within the statutory nuisance regime of the Environment Protection Act 1990 in respect of odour from sewage treatment works.

3. The High Court’s decision was due in March 2003 but was delayed until 23 May 2003. The court ruled that an abatement notice issued by Hounslow Council under section 79(1)d of the Environmental Protection Act 1990, requiring the control of odour nuisance from Mogden Sewage Treatment works was valid. The High Court agreed with the Council’s argument that sewage treatment works constitute “premises” for the purposes of section 79(1)(d) of the Act. The owning company, Thames Water, are now in the process of obtaining leave to appeal against this
ruling to the House of Lords. This final appeal process may take some
months to conclude.

4. The High Court judgement may be persuasive authority in
Scotland for the proposition that sewage treatment works are covered by
the statutory nuisance regime. In due course the decision of the House of
Lords will be definitive and binding in Scots law. Given this background,
the Scottish Executive and as I understand it, the UK Government are of
the view that action needs to be taken in advance of the House of Lords
ruling. I understand that the UK Government is proposing to prepare,
whatever the outcome of the House of Lords appeal, a voluntary Code of
Practice that will provide advice and guidance to local authorities, the
sewage industry and the public regarding the successful resolution of
odour and other nuisance problems from sewage treatment works. The
draft Code is expected to be put to public consultation towards the end
of the year. The Executive agrees with this approach and we will work
alongside Defra in preparing a draft Code and issuing a parallel
consultation in Scotland later this year. In the event, however, of the
House of Lords upholding Thames Water’s appeal we would wish to
consult on legislative change after that.

5. I hope this enables you to update your Committee accordingly, and
demonstrate that the Executive is and will be taking appropriate action
on this matter. If you do require further information, please do not
hesitate to contact me.

DUNCAN McNAB