1. **Agricultural Holdings (Scotland) Bill**: The Committee will take evidence at Stage 1 from—

Alex Hogg and Davey Thomson, Scottish Gamekeepers’ Association.

2. **Scallop industry**: The Committee will take evidence on current issues affecting the Scottish scallop industry from—

   Ross Finnie MSP, Minister for Environment and Rural Development

   Mary Mulligan MSP, Deputy Minister for Health and Community Care.

3. **Agricultural Holdings (Scotland) Bill**: The Committee will take evidence at Stage 1 from—

   Ross Finnie MSP, Minister for Environment and Rural Development.

4. **Agricultural Holdings (Scotland) Bill**: The Committee will consider the evidence received at Stage 1.

5. **Subordinate Legislation**: The Committee will consider the following negative instrument—

   The Plant Health (Phytophthora ramorum) (Scotland) (No.2) Order 2002 (SSI 2002/483).

Tracey Hawe
Clerk to the Committee
The following papers are attached or are relevant to this meeting:

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<th>Agenda item 1</th>
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<td>Submission from Scottish Gamekeepers Association</td>
<td>RD/02/29/1/a</td>
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<tr>
<td>Supplementary submission from Jamie Williamson, Alvie &amp; Dalraddy Estates</td>
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<tr>
<td>Members are reminded to bring with them a copy of the Agricultural Holdings (Scotland) Bill and accompanying documents</td>
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<th>Agenda item 2</th>
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<td>Correspondence from the Convener to the Minister for Environment and Rural Development</td>
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The following papers first issued for the Committee meeting on 8 October are also relevant. Members are asked to contact the clerks if they require further copies. Alternatively, spare copies will be available at the meeting.

Briefing paper from the Committee’s reporters
Submission from Clyde Fishermen’s Association
Submission from Western Isles Fishermen’s Association
Submission from Mallaig & North West Fishermen’s Association
Submission from the Food Standards Agency Scotland

The FSA Scotland consultation paper on the implementation of Commission Decision 2002/226/EC (and accompanying documents) can be viewed on the FSA website. A hard copy of this document is available from the clerks. This paper includes:
- a copy of Commission Decision 2002/226/EC
- draft version of The Food Safety (Fishery Products and Live
<table>
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<th>Agenda item 5</th>
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<td>The Plant Health (Phytophthora ramorum) (Scotland) (No.2) Order 2002 (SSI 2002/483)</td>
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<td>Extract from Subordinate Legislation Committee’s 41st Report (to follow)</td>
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Supplementary papers
The Scottish Gamekeepers Association (SGA) is committed to ensuring that future generations can enjoy Scotland’s unique biodiversity & landscapes and that rural employment is sustainable.

Our scrutiny of legislation centres on these criteria.

Our biodiversity, which the United Kingdom has European commitments to maintain and which we as citizens have a moral obligation to safeguard for future generations, is the result of many generations of land management. We urge our politicians to ensure that legislation seeks to enhance and build on what we have.

**Diversification:**

Much of our farmland is managed for sporting purposes and it is this management that assists in providing suitable habitat and conditions for many rare ground-nesting birds such as the grey partridge, merlin, golden plover, capercaillie, curlew, lapwing, hen harrier and black grouse, to name but a few.

For all forms of diversification other than tree planting, the Bill states that the tenant simply serves a notice on the landlord. What happens if the landlord objects on the grounds provided for in this Bill?

Fragile and marginal land is vulnerable to disturbance and along with legislation encouraging greater access to our countryside, the right to diversification could jeopardise habitats. For example, if a tenant decides to set up a cross-country motorcycle track or a paintball business, the impact from noise and disturbance on fragile habitats and wildlife would be significant. The Scottish Executive and its Ministers must be aware of their responsibilities and the potential dangers lurking within this proposal.

The Bill says that Landlord's express consent is required for tree planting. The tenant however has a right of appeal. The onus is then on the Landlord to object and satisfy the Land Court that the diversification should not be allowed. The SGA are concerned that the Land Court may not have the expertise to consider the proposal’s impact on conservation and employment.

If the Land Court upholds an appeal, the tenant could plant trees on land used for pheasant or grouse management ruining an already productive business. Does the Scottish Parliament wish to substitute for one successful business another of limited financial benefit as things currently stand and which may well be detrimental to biodiversity?

Game Conservancy Trust studies have shown that game crops containing kale (an important crop used by gamekeepers for gamebirds) can attract hundreds of small wild birds, of various species, per hectare (see figure below). Indeed, cover crops attract more birds than other areas of farms. A similar pattern is found during the summer months when the crops also attract huge numbers of butterflies and bumblebees.
Such cropping has a major impact in arresting the decline of wildlife populations by providing much needed resources. Without this management, these birds would not exist in such numbers. Again, careful consideration of possible implications is required.

After the agricultural revolution there was increased interest in managing game for sport and, by 1911, there were around 25,000 gamekeepers nationwide involved in wildlife management and protecting gamebirds. At this time, we estimate from bag data that there must have been more than a million pairs of grey partridges breeding in Britain. In the 1950s, a sharp decline in partridge numbers followed the introduction of herbicides into modern cereal-growing systems. This was exacerbated by a loss of hedgerows and the employment of fewer gamekeepers. In the early 1990s, there were around 145,000 partridge pairs but on-going monitoring suggests that numbers have halved since then. Capercaillie numbers too have crashed and this magnificent bird is in danger of becoming extinct in Scotland for the second time. Following the loss of the capercaillie in the mini ice age and deforestation in the 18th Century, capercaillie were re-introduced by landowners - and managed by gamekeepers - in the 1830s and flourished until the 1960s/70s when a massive increase in the fox population occurred.

The Agricultural Holdings Bill should take careful account of our commitments to biodiversity and recognise the important role sporting estates play in the conservation of our wildlife.

The pre-emptive right to buy:
The SGA are concerned that fragmentation of estates will not be good for conservation and may well lead to gamekeepers’ redundancies. Furthermore, we are not convinced that the pre-emptive right to buy will solve any problems within the agricultural sector. Many tenant farmers struggling to earn a living would not still be in the business if it were not for the landlord-tenant system that has allowed them to spread costs and increase stock numbers. Over 33% of the world’s heather is in Scotland and is declining worldwide. Without grouse shooting much of the UK’s heather would have been lost. Aerial photographs have shown that since the 1940s heather loss has been 17% on Scottish grouse moors but there has been a reduction of up to 50% on moors where there has never been shooting or where sport has stopped.
If a farmer buys moorland currently managed for sporting purposes he, hopefully, receives well-managed heather moorland rich in wildlife and other biodiversity. Will he continue to promote the sporting aspect? If he has sole control over stock numbers using the hill, will he consider bird populations or will he use the land to run more cattle and sheep? This land may be part of a larger grouse moor but will not be economically viable on its own as a sporting area; therefore, no wildlife manager will be employed. No wildlife manager means little or no pest control and little or no controlled heather burning, biodiversity, including the heather habitat, will suffer.

Tenant farmers exercising their right to buy will become owner/occupiers and therefore able to shoot deer on their land at any time even without the sporting rights. There is no incentive for farmers to manage deer sustainably, unlike wildlife managers who perform a professionally selective cull.

Red Deer are a tourist attraction; you would have to go to Africa to see such herds of wild mammals in their natural habitat.

Deer are a major source of income for remote and fragile communities – the sporting guest (often from overseas) spends money in our hotels, our shops, our garages as well as contributing towards the stalkers’ salaries. Responsible, sustainable deer management depends upon co-operation across boundaries.

Are sporting rights to be excluded from the tenant’s right to purchase and if so, how will current legislation be altered to allow for this? If a tenant buys the sporting rights, will he run a commercial shoot? Will he employ a gamekeeper? If not, there will be a knock on effect on biodiversity, tourism and employment in that area.

How will the biodiversity benefit or suffer from the change in ownership? Field sports require habitats, which are also necessary for biodiversity and conservation. Farming, or other ‘money making’ schemes, require maximum use of the land; habitat and biodiversity are not top of the list unless the taxpayer is willing to make it financially worth while for the farmer.

Conservation bodies such as SNH, RSPB and SWT continually criticize farmers land use practices; we would be interested to hear their views on the pre-emptive/absolute right to buy and on diversification.

If the sporting use of land ceases, the government will have to fund, from taxpayers’ money, conservation projects currently carried out and funded by landowners. According to the MacKenzie Survey July 2000, this is approximately £10 per acre per annum.

All forms of wildlife management, whether it is Deer, Grouse, Pheasant etc, create and sustain employment in rural areas. The pre-emptive right to buy could seriously jeopardise employment and economic activity in the countryside.

These arguments also apply to the Absolute Right to Buy, which some are currently advocating.

The Absolute Right to Buy will fragment rural Scotland and put gamekeepers out of jobs, leaving their families homeless.

Estates employ gamekeepers, stalkers & ghillies. Individual farmers do not employ gamekeepers, stalkers & ghillies.

We understand the Tenant Farmers Action Group (TFAG) will submit in oral evidence that in rural Scotland, a handful of jobs can be the difference between a school or a pub closing and a village being reduced to a mere settlement. We agree with this statement. However, as gamekeepers and farmers utilise the same ground, this of course is equally relevant to the loss of gamekeepers’ jobs. If the SGA is not granted the opportunity to give oral evidence, only one side of the story will be heard and democracy will not be served.
Example: on 180,000 acres in the Angus Glens:
73 people work on the land
145,000 acres are subject to tenanted farming and game shooting interests.
Of the 73 people:
39 are gamekeepers with twenty children under 17 years of age
29 are tenant farmers, with thirteen children under 17; employing 5 adults who have two
children between them.
Wildlife management requires a scale that individual farmers cannot offer and a right to buy
would almost certainly lead to gamekeepers losing their jobs.
Individual farmers could not justify or would frequently have no intention of employing
gamekeepers
Farmers will have to put profit before any consideration of wildlife or biodiversity
Deer management requires scale to be effective. Fragmented holdings could only operate by
employing contract stalkers or doing it themselves without adequate training and welfare
considerations; farmers may not control deer numbers in a manner beneficial to either their
welfare or their sustainability
Farmers may not manage heather to benefit wildlife and biodiversity – they might only burn
large areas, if at all
Many farmers do not control foxes or other pests; gamekeepers do it for them. Without
balanced management, Scotland’s wildlife will suffer
Individual farms in many areas could not financially sustain commercial fieldsports
(particularly grouse shooting). Without organised shooting, rural tourism – and rural
communities – will suffer the loss of millions of pounds per annum. Note: Grouse shooters
contribute up to £1,500 per person per day to the local economy
If half the above tenant farmers (15) took up the Absolute Right To Buy, this would adversely
affect the shooting and wildlife management interest, 18 or more gamekeepers could lose
their jobs and their homes, 10 or more children would leave the local school.
We wonder what view local authorities and the business community would take of a proposal
for their sitting tenants to have similar options to buy.
Using the ‘absolute right to buy’ as a means to make landowners repair houses etc is not a
constructive move. Tightening existing legislation to ensure that landowners and tenants
comply with the terms of tenancies is a better and less confrontational solution.

The SGA is fundamentally opposed to the Absolute Right to Buy.
SUPPLEMENTARY SUBMISSION FROM JAMIE WILLIAMSON, ALVIE & DALRADDY ESTATES

Could you please thank the Rural Development Committee for giving me the opportunity to give oral evidence on the Agricultural Holdings (Scotland) Bill. I found both the Committee and staff courteous, human and helpful despite the intimidating surroundings. I was encouraged to note that both landlords and tenants concur with Ross Finnie’s objective to revitalise the tenanted sector in Scotland and agree that the Bill as published goes some way towards achieving this. Disagreement among those most directly involved is only in certain details of the Bill; particularly a right to buy and compensation at way go. I believe that both tenants and landlords also support Sir Crispin Agnew’s plea to keep the legislation simple and share his concern that where this legislation overlaps with the Land Reform Bill, there are inconsistencies in who determines values and on what basis. This is perhaps a consequence of the two Bills being processed by different committees although both will have a significant impact on rural development in Scotland. If the Agricultural Holdings (Scotland) Bill does not include a right to buy the inconsistency with the Land Reform Bill in regard to valuation disappears. It was clear from the questioning that some members of the Rural Development Committee remain unclear in regard to my concerns over a pre-emptive right to buy in situations where there is more than one lease (tenancy) on a landholding. In contrast to politicians, eloquence is not a prerequisite to being a farmer, factor or landlord. I would therefore like to further clarify my concerns in writing.

Retrospective Legislation

I perceived that my concern over retrospective legislation is understood. Agreements are normally made between two parties on the basis of the legislation in force at the time the agreement is made. If a precedence is created for retrospective legislation and either party perceives that this could happen to their disadvantage, they may not risk entering into an agreement. This happened both with the introduction of legislation on crofting and with the 1991 Agricultural Holdings Act. This is in part to blame for the decline in new agricultural tenancy agreements. If landlords perceive that a right to buy might be retrospectively extended to Limited Duration Tenancies at some later date, based on the premise that this Bill includes retrospective legislation, this will discourage landlords from entering into Limited Duration Tenancies. Creating a pre-emptive right to buy retrospectively on 1991 Act tenancies will not encourage anymore tenancies to be created, it will discourage landlords from entering into further agricultural tenancies and act contrary to Ross Finnie’s objective to revitalise the (agricultural) tenanted sector in Scotland.

Multiple Leases on the Same Landholding

The impact of a pre-emptive right to buy on a multiple lease situation is more difficult to explain. The need to diversify away from traditional farming and forestry is accepted. The intention of this Bill is to facilitate diversification. I will use my own circumstance to illustrate the problem. Declining returns from hill farming and forestry has forced me to look elsewhere for sufficient income to allow me to remain as an owner occupier on my land. I have achieved this by persuading other interests to invest in the same landholding for different purposes. On Alvie Estate we now have a number of leases operating sometimes over the same ground for different purposes. Some but not all fall within the scope of the Agricultural
Holdings (Scotland) Bill. These leases include my farm tenancy in the form of a Limited Partnership, a horticultural tenancy, also in the form of a Limited Partnership, a lease for a fish hatchery which could fall within the scope of the Agricultural Holdings (Scotland) Bill, plus two quarry leases, lease of land plus building to a local blacksmith, several telecommunication mast leases, a number of domestic leases and two sporting leases under negotiation, all of which do not fall within the scope of the Agricultural Holdings (Scotland) Bill.

On our marginal hill ground it has become clear that sporting interests are willing to invest more and employ more people, independent of grant aid than I can afford to do on the farm. However I must persuade the prospective sporting tenant to invest on my land in preference to purchasing his own estate and pursuing his sporting interest as an absentee landowner elsewhere. In order to give the sporting tenant equivalent security to investing in his own property I can offer him a pre-emptive right to purchase the estate if it was ever sold within the period of the lease as part of the package. If however the Agricultural Holdings (Scotland) Bill gives agricultural tenants a pre-emptive right to buy, I cannot offer this security to the sporting tenant. He will have more security if he invests in land where there are no tenants that fall within the scope of this Bill. If this Bill ends up including an absolute right to buy, prospective tenants who do not come within the scope of this Bill would be ill advised to invest in any land where there is an agricultural tenancy. As the farming tenant, albeit in the form of a Limited Partnership, you could argue that including a pre-emptive or absolute right to buy the land would be to my benefit. But that is not the case. If I bought the land I could only remain as an owner-occupier if I could persuade others to invest. Prospective non-agricultural tenants will be reluctant to invest if the holding includes agricultural tenants who may have a right to buy. Therefore in my situation as both owner-occupier and tenant farmer I would be better off if there is no right to buy, pre-emptive or otherwise.

My concern is that any right to buy will effectively blight land on which there is a tenant that comes within the scope of this Bill. It will discourage rather than encourage present agricultural tenancies to continue and discourage new tenancies, both agricultural and non-agricultural to be created.

It is perhaps an unfortunate situation that our quarry, sporting and fish farm tenants now have a larger investment in Alvie Estate and employ more people than I do as the farming tenant. If this type of situation is widespread in marginal farming areas of the Highlands, I believe the Committee would be ill advised to place agricultural tenants out of balance with other prospective tenants by granting them a right to buy, particularly at a time when agriculture is in decline and other prospective tenants are becoming relatively more important.

**Sporting Rights**

It was suggested that a right to buy could exclude sporting rights. It was correctly concluded that sporting rights could not be separated from ownership of the land without a change in legislation.

There is however another problem with separating the sporting rights from the land. Deer and hares can conflict with farm and forestry interests. If the farmer or forester shoots all the deer as marauding, this could seriously conflict with the interests of the sporting tenant. Close co-operation is normally required in vermin control, heather burning and tick control on moor land for the benefit of grouse, sheep and deer. On low ground co-ordination is required in establishing game crops, meeting rural stewardship obligations and managing access for bird shooting. Care must be taken to ensure that someone has the ability to manage both farming and field sports so that the two interests operate over the same ground in relative harmony and not in conflict.
An agricultural tenant purchasing his holding without regard for non-agricultural tenants operating over the same land could be to the detriment of non-agricultural investment.

**Compensation at Way Go**

If it is perceived the incoming tenant will struggle with an open market rent, the landlord can offer a lower rent in return for a quicker right down of tenant’s improvements. In the case of our fish hatchery, which comes within the scope of the Agricultural Holdings (Scotland) Bill if it produces fish for food, if the tenant leaves without managing to assign the lease to another fish farming business, the large investment in tanks, pumps and piping is unlikely to be of much more than scrap value to the landlord. Should therefore the landlord be forced to compensate the out going tenant for the value of these specialist assets and if so at what value?

The agreement reached on compensation at way go is normally the end result of negotiations concluded in good faith between two willing parties. To remove the ability of landlord and tenant to agree a way go value on existing leases would be retrospective legislation that will discourage the creation of new tenancies for fear of further adverse retrospective legislation. If Alvie Trust thought that they might have to pay the fish hatchery tenant for his fixed equipment if he leaves, they may not have entered into such a lease.

**Landlord – Tenants Forum**

In reading through the submissions where various problems with existing tenancies have been highlighted, I suggest that many could have been resolved if there was a forum where good practice could be agreed and promoted and disputes could be resolved quicker and at a cost affordable to both landlord and tenant. Dropping a tenant’s right to buy and establishing a landlord – tenants forum would have the effect of encouraging the creation of new tenancies, continuing existing tenancies, simplifying the proposed legislation and resolving many of the specific problems highlighted in regard to existing tenancies. It would achieve Ross Finnie’s objective of revitalising the tenanted sector in Scotland.

Jamie Williamson
14 November 2002
Dear Minister

Issues affecting the Scottish scallop industry

As you are aware the Rural Development Committee has considered issues affecting the Scottish scallop industry on a number of occasions during this Parliamentary session. The Committee’s second report of 1999 examined the growing impact of Amnesic Shellfish Poisoning (ASP) on the scallop industry, and the Committee has received regular updates since then. The Committee has remained concerned to ensure that the needs and views of the industry are given due consideration, while acknowledging the primary aim of protection of public health.

On 8 October 2002 the Committee heard evidence from a number of bodies with an interest in this field, to coincide with the end of a consultation by the Food Standards Agency Scotland (FSAS) on the implementation in Scotland of a tiered testing regime for monitoring of ASP in scallops. The Committee heard from representatives of the scallop industry (including catchers, growers and processors), and from the European Commission, the FSAS, and Scottish Executive officials. The Committee also heard evidence on proposed technical conservation measures for the scallop fishery.

Amnesic Shellfish Poisoning and the Proposed Testing Regime

The Committee acknowledges that the procedures required by the regulatory framework are complex. The Committee understands that Council Directive 91/492/EEC must be complied with, and that the Commission Decision 2002/226/EC is intended as an optional derogation to allow Member States more flexibility. It also acknowledges the FSAS role in developing appropriate systems for the protection of public health. However, the Committee is gravely concerned that unanimous opinion of the industry is that the proposed regime will be so costly and restrictive that it will decimate the industry. The Committee considers that appropriate accommodation of the industry’s perspectives can be made without undermining the primacy of public health protection.

The Committee strongly requests that you consider the following points:

a) The FSAS indicated that it intends to bring forward advice to Ministers on the implementation of tiered testing before the end of this year. This is presumably based on the apparent opinion of the European Commission that the enforcement regime currently in
place in Scotland does not comply with obligations under the Directive. The Committee notes that no formal evidence of this opinion has been made publicly available, and requests that confirmation of such advice should be provided.

b) The Committee notes the uncontested evidence that the existing regime has been pursued over recent years with no single recorded public health incident as a result of consuming scallops. In this context, the Committee strongly recommends that Scottish Ministers should instruct the FSAS to delay bringing forward a proposed tiered testing regime. The Committee considers that the case for urgency in bringing this new regime forward was not well made, and that such a regime should be delayed until scientific understanding of the issues has developed further, and until further consultation has taken place with the industry.

c) On previous occasions the Committee has conveyed the concerns expressed by industry at the scientific basis for the regulatory framework. It has urged the Scottish Executive to support measures which would enhance the scientific understanding both of the causes and biochemistry of ASP, and the appropriate means of ensuring the safety of those consuming scallop products. The Committee understands that FSAS has recently received the results of commissioned research on inter-animal variability, and hopes this research will be taken into account during the development of proposals. The Committee requests that the Scottish Executive provides the Committee with a progress report on all research activity undertaken since 1999, and on the research currently in progress or being considered.

d) The Committee was particularly concerned that the assumptions governing the action limit set in the regulatory regime are based on science associated with mussels rather than scallops. The available science is also focused on concentrations of toxins rather than any risk assessment based on likely portion size and amount of scallop actually consumed. The Committee particularly noted that an industry group was trying to raise funds for a key study which would include research on scallop consumption. The Committee welcomed the undertaking by Executive officials that identifying funding for research would be a priority, and urges you to confirm that this will be pursued urgently.

e) The Committee particularly welcomed the invitation from the European Commission for the FSAS to formally request that the European Reference Laboratory in Vigo be asked to examine whether evidence now exists to justify modifying the action level of 20mg/kg and the trigger level. The Committee was concerned at indications that developing the research effort was not being pursued by the various statutory bodies as energetically as might be hoped. It urges you to ensure that the FSAS takes the lead (at a UK level) in taking up this invitation immediately.

f) The Committee acknowledges that long-term changes to the European Directive must follow an appropriate process, and must be generated through scientific development. It particularly welcomes the re-affirmation of the European Commission’s position that the Directive can be reviewed in the light of scientific progress. In the event that the European Reference Laboratory confirms that modification may be appropriate, the Committee urges you to ensure that the FSAS vigorously pursues modification of the Directive and Decision as appropriate.

g) The Committee was very interested to hear of the apparently robust and comprehensive traceability and quality assurance schemes already employed by many scallop processors. It also noted recent research indicating that high quality guidance on processing and
preparation of scallops could go a long way to reducing toxin levels in end products. Many in the industry indicated their hope that this would be the long-term route to controlling ASP. The Committee welcomes the undertaking by the FSAS to examine quality assurance and education schemes, and urges the FSAS to consider adapting and utilising existing industry systems. However, the FSAS stated that legal advice from the Scottish Executive was that such measures may not be adequate to meet the requirements of the Directive and Decision. The FSA agreed that this advice could be made public, and the Committee requests that you ensure that it is sent to the Committee and to industry representatives as soon as possible.

h) If, in due course, a tiered testing regime is brought forward, the Committee is extremely concerned at evidence that many aspects of the regime go beyond that required by the European regulatory framework. In particular the Committee notes that repeated sampling of scallops must be undertaken by fishermen and at their own expense. The Committee considers that this, and other aspects of the FSA’s proposed regime (such as tagging and landing arrangements), place an unjustifiable burden on the industry. Their rationale in terms of the protection of public health is not immediately obvious to the Committee. More fundamentally, placing the burden of responsibility on fishermen is an inappropriate approach to public health and undermines the required credibility of the sampling.

i) The Committee is concerned that industry representatives unanimously feel that the FSAS proposals do not indicate any appreciation of the way in which the scallop industry operates. After two years of discussion, the Committee is particularly concerned at the indications that communication between the parties has not been effective. The Committee therefore recommends that the current draft regulation is not an appropriate basis on which to proceed, and should be radically reconsidered if some form of tiered testing regime is eventually to be implemented. The Committee welcomes indications from the FSAS that points made in evidence on 8 October would be considered.

j) The Committee noted with concern evidence that the FSAS had apparently breached an agreement to involve the industry in consultation prior to producing its consultation document on the tiered testing regime. The Committee recommends that any future scheme must take into account a full regulatory impact assessment, and should not be brought forward before the research (commissioned by the Scottish Executive) into the economic impact of ASP has been completed and fully considered.

Proposed Technical Conservation Measures

On 8 October the Committee also heard evidence on proposed technical conservation measures for the scallop fishery. The Committee recognises that the consultation on the draft Prohibition of Fishing for Scallops (Scotland) Order 2001 was originally conducted before the industry was so seriously affected by recurrent outbreaks of ASP. However, the Committee also noted that you announced in August 2002 your intention to proceed with such measures.

The appropriateness of such measures when the industry is overshadowed by the pressures associated with ASP is not clear. The Committee is extremely concerned that the introduction of such measures would be, at best, irrelevant until such time as the method for dealing with ASP has been satisfactorily resolved. It is persuaded by evidence from the industry that the introduction of some of these measures at this time may be unnecessary. The Committee considers that soundly-based and appropriate conservation measures are likely to secure the broad support of the industry. Indeed some of the technical measures
(for example, relating to dredge design) do appear to have industry support. However, the Committee is not persuaded that some of the proposed measures, and in particular the proposed weekend ban, are appropriate. **The Committee therefore requests that you reconsider your intention to introduce them at present.**

In particular the Committee is very concerned that:

- no evidence or reasoned argument has been presented to indicate precisely what these measures are expected to achieve in conservation terms
- some within the fishing and processing sectors have suggested that the weekend ban will result in no reduction in fishing effort, but rather will cause significant disruption to the processing industry and has the potential to expose crews to safety risks through the added pressure that an inflexible scheme would place on catchers
- the measures do not appear to have taken the impact of ASP, or the requirements of any new testing regime into account
- the proposals do not appear to have changed significantly as a result of the consultation exercise, in spite of very substantial concerns expressed by a large proportion of the industry.

If, in due course, you consider that it is appropriate to bring forward revised technical conservation measures, **the Committee strongly recommends that you engage 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. The Committee hopes that this would be an appropriate way to secure the support of the industry.

I would be grateful to have your comments on these matters in early course. The Committee considers these issues to be of urgent concern, and has agreed to consider this matter again at its meeting on 29 October. The Committee is anxious to have your reply on these matters by then so that it can consider whether to seek further oral evidence from you in the light of that reply. **Accordingly, I would be grateful if you could reply by Wednesday 23 October if possible.** As this is in Parliamentary recess, I would be grateful if you could copy your response to the Clerk to the Committee, Tracey Hawe.

You may wish to note that I am writing to Malcolm Chisholm MSP, Minister for Health and Community Care, in similar terms on the ASP issue.

Yours sincerely

---

Alex Fergusson MSP  
Convener  
Rural Development Committee  
Tel: 0131-348-5636

cc Margaret Smith MSP – Convener, Health & Community Care Committee  
Jennifer Smart – Clerk, Health & Community Care Committee
Thank you for your letter of 9 October on issues affecting the Scottish scallop industry. I know that you wrote in similar terms to Malcolm Chisholm, and he will be replying to you on the points that are particularly relevant to his responsibilities for public health.

**Amnesic Shellfish Poisoning**

In your letter to me, the Committee poses a number of questions in relation to whether the present ASP testing regime and industry-proposed scallop quality assurance schemes meet European obligations. In addition, the Committee has requested a delay to the implementation of the proposed tiered testing regime until new research into the ASP risk to human health is completed. Linked to this, the FSAS has been asked to pursue modifications to European legislation. These points all relate specifically to fundamental measures to ensure that public health is protected, and Malcolm Chisholm will comment on them in his response.

With reference to the recent consultation by the FSAS on the proposed tiered testing system (the third consultation on the subject), the Committee comments that the draft regulation as presented is inappropriate, and that proposals which include sampling undertaken by fishermen are unfair. The purpose of undertaking a consultation exercise was to gather the views of stakeholders, and thereby providing another opportunity to flag up any concerns or suggestions in relation to the proposed tiered testing regime. The FSAS will be taking concerns that have been expressed by fishermen and other stakeholders during the consultation, and reflected by the Committee, into consideration as they work towards recommendations for a way forward. As far as I am aware, those recommendations, which will include the timing of implementation, have not yet been fully developed, and Ministers have certainly not taken any decisions on the matter. A request to delay implementation is therefore perhaps a little premature.
You will be aware that the alternative to implementation of the derogation to Directive 91/492 that the Commission Decision of 15 March provided (and which is being pursued via the tiered testing proposals) is to implement the Directive in full. This was confirmed in the Commission’s evidence at the session on 8 October. The effect of this would be to close areas to scallop fishing once a whole animal sample was taken that exceeded 20µg/g of domoic acid. That amounts to a more stringent control on fishing than is in place at present, and than that which is to be found in current tiered testing proposals.

In terms of Executive and FSAS research activity relating to ASP since 1999:

- The FSAS commissioned new research into the relationship between phytoplankton and algal toxins, due to run between January 2000 and September 2003;
- The FSAS has provided continuing funding to develop rapid detection test kits for ASP and PSP between August 2000 and August 2002;
- The Executive commissioned EKOS to undertake an economic analysis of the impact of algal toxin closures in August 2001. The final report was received at the end of September 2002 and the Scottish Scallop Advisory Committee will discuss the findings of the report.

Furthermore, my officials are presently developing proposals for new research with scientists and the industry through the Scottish Scallop Advisory Committee, in order to inform any revision of European legislation. Proposals have also been received from the industry for FIFG (Financial Instrument for Fisheries Guidance) funding for a scallop portion size study.

**Scallop Technical Conservation**

The Committee queried what the proposed measures are intended to achieve in conservation terms. The Executive is concerned that continued increase of effort could lead to unsustainable pressure on the stock and the measures are principally designed to constrain that increase in effort. The most recently published scientific report¹ has indicated that the most obvious signs of decline are to be found in the area which had experienced the highest level of effort. The Executive does not wish to see all of Scotland’s scallop stocks giving cause for concern. The measures are in line with the precautionary approach to fisheries management, and I believe it would be wrong to wait until the stock is seriously damaged before acting.

The Committee also raised questions regarding the necessity of implementing technical conservation measures while ASP closures are currently preventing dredging in certain areas. The Executive cannot responsibly rely on a disease over which it has no control as a stock conservation policy. The closures caused by ASP do not provide consistent stock protection because as soon as an area is reopened, it is immediately subject to heavy fishing pressure to take advantage of the fresh grounds. A further cause for concern is caused by the displacement of the fleet from closed areas. This increases pressure on the areas which remain open as they are subject to increased pressure from the displaced boats; the stocks in these areas are thus in greater need of protection.

I recognise that the weekend ban is controversial, but I do not accept that it would offer no reduction in fishing effort. Indeed it is the inflexible nature of the closure that places a downward pressure on days fished. The suggestions made of a more robust use of scallop licensing and a days at sea scheme were included in the Executive's consultation in April last year. They did not receive widespread support. I am unclear as to precisely what is meant by the suggestion to alter the minimum landing size or what benefit this would have.

¹ FRS Marine Laboratory Report No 19/01, Report of Marine Laboratory Scallop Stock Assessments (October 2001). Available from: FRS Marine Laboratory Library, PO Box 101, 375 Victoria Road, Aberdeen, AB11 9DB
Nevertheless, I do recognise that certain sectors of the industry have genuine concerns and I shall reflect fully on the balance of the current package and consider whether there is a case for a reconsultation on the proposals. I will of course keep the Rural Development Committee informed.

I hope that this is helpful. A copy of this letter goes to Malcolm Chisholm, and to Tracey Hawe (Clerk to the Committee).

ROSS FINNIE
Amnesic Shellfish Poisoning (ASP)

Background

As you are aware the Rural Development Committee has considered issues affecting the Scottish scallop industry on a number of occasions during this Parliamentary session. The Committee’s second report of 1999 examined the growing impact of Amnesic Shellfish Poisoning (ASP) on the scallop industry, and the Committee has received regular updates since then. The Committee has remained concerned to ensure that the needs and views of the industry are given due consideration, while acknowledging the primary aim of protection of public health.

On 8 October 2002 the Committee heard evidence from a number of bodies with an interest in this field, to coincide with the end of a consultation by the Food Standards Agency Scotland (FSAS) on the implementation in Scotland of a tiered testing regime for monitoring of ASP in scallops. The Committee heard from representatives of the scallop industry (including catchers, growers and processors), and from the European Commission, the FSAS, and Scottish Executive officials.

Proposed Testing Regime

The Committee acknowledges that the procedures required by the regulatory framework are complex. The Committee understands that Council Directive 91/492/EEC must be complied with, and that the Commission Decision 2002/226/EC is intended as an optional derogation to allow Member States more flexibility. It also acknowledges the FSAS role in developing appropriate systems for the protection of public health. However, the Committee is gravely concerned that unanimous opinion of the industry is that the proposed regime will be so costly and restrictive that it will decimate the industry. The Committee considers that appropriate accommodation of the industry’s perspectives can be made without undermining the primacy of public health protection.
The Committee strongly requests that you consider the following points:

a) The FSAS indicated that it intends to bring forward advice to Ministers on the implementation of tiered testing before the end of this year. This is presumably based on the apparent opinion of the European Commission that the enforcement regime currently in place in Scotland does not comply with obligations under the Directive. The Committee notes that no formal evidence of this opinion has been made publicly available, and requests that confirmation of such advice should be provided.

b) The Committee notes the uncontested evidence that the existing regime has been pursued over recent years with no single recorded public health incident as a result of consuming scallops. In this context, the Committee strongly recommends that Scottish Ministers should instruct the FSAS to delay bringing forward a proposed tiered testing regime. The Committee considers that the case for urgency in bringing this new regime forward was not well made, and that such a regime should be delayed until scientific understanding of the issues has developed further, and until further consultation has taken place with the industry.

c) On previous occasions the Committee has conveyed the concerns expressed by industry at the scientific basis for the regulatory framework. It has urged the Scottish Executive to support measures which would enhance the scientific understanding both of the causes and biochemistry of ASP, and the appropriate means of ensuring the safety of those consuming scallop products. The Committee understands that FSAS has recently received the results of commissioned research on inter-animal variability, and hopes this research will be taken into account during the development of proposals. The Committee requests that the Scottish Executive provides the Committee with a progress report on all research activity undertaken since 1999, and on the research currently in progress or being considered.

d) The Committee was particularly concerned that the assumptions governing the action limit set in the regulatory regime are based on science associated with mussels rather than scallops. The available science is also focused on concentrations of toxins rather than any risk assessment based on likely portion size and amount of scallop actually consumed. The Committee particularly noted that an industry group was trying to raise funds for a key study which would include research on scallop consumption. The Committee welcomed the undertaking by Executive officials that identifying funding for research would be a priority, and urges you to confirm that this will be pursued urgently.

e) The Committee particularly welcomed the invitation from the European Commission for the FSAS to formally request that the European Reference Laboratory in Vigo be asked to examine whether evidence now exists to justify modifying the action level of 20mg/kg and the trigger level. The Committee was concerned at indications that developing the research effort was not being pursued by the various statutory bodies as energetically as might be hoped. It urges you to ensure that the FSAS takes the lead (at a UK level) in taking up this invitation immediately.

f) The Committee acknowledges that long-term changes to the European Directive must follow an appropriate process, and must be generated through scientific development. It particularly welcomes the re-affirmation of the European Commission’s position that the Directive can be reviewed in the light of scientific progress. In the event that the European Reference Laboratory confirms that modification may be appropriate, the
Committee urges you to ensure that the FSAS vigorously pursues modification of the Directive and Decision as appropriate.

g) The Committee was very interested to hear of the apparently robust and comprehensive traceability and quality assurance schemes already employed by many scallop processors. It also noted recent research indicating that high quality guidance on processing and preparation of scallops could go a long way to reducing toxin levels in end products. Many in the industry indicated their hope that this would be the long-term route to controlling ASP. The Committee welcomes the undertaking by the FSAS to examine quality assurance and education schemes, and urges the FSAS to consider adapting and utilising existing industry systems. However, the FSAS stated that legal advice from the Scottish Executive was that such measures may not be adequate to meet the requirements of the Directive and Decision. The FSA agreed that this advice could be made public, and the Committee requests that you ensure that it is sent to the Committee and to industry representatives as soon as possible.

h) If, in due course, a tiered testing regime is brought forward, the Committee is extremely concerned at evidence that many aspects of the regime go beyond that required by the European regulatory framework. In particular the Committee notes that repeated sampling of scallops must be undertaken by fishermen and at their own expense. The Committee considers that this, and other aspects of the FSA’s proposed regime (such as tagging and landing arrangements), place an unjustifiable burden on the industry. Their rationale in terms of the protection of public health is not immediately obvious to the Committee. More fundamentally, placing the burden of responsibility on fishermen is an inappropriate approach to public health and undermines the required credibility of the sampling.

i) The Committee is concerned that industry representatives unanimously feel that the FSAS proposals do not indicate any appreciation of the way in which the scallop industry operates. After two years of discussion, the Committee is particularly concerned at the indications that communication between the parties has not been effective. The Committee therefore recommends that the current draft regulation is not an appropriate basis on which to proceed, and should be radically reconsidered if some form of tiered testing regime is eventually to be implemented. The Committee welcomes indications from the FSAS that points made in evidence on 8 October would be considered.

j) The Committee noted with concern evidence that the FSAS had apparently breached an agreement to involve the industry in consultation prior to producing its consultation document on the tiered testing regime. The Committee recommends that any future scheme must take into account a full regulatory impact assessment, and should not be brought forward before the research (commissioned by the Scottish Executive) into the economic impact of ASP has been completed and fully considered.

I would be grateful to have your comments on these matters in early course. The Committee considers these issues to be of urgent concern, and has agreed to consider this matter again at its meeting on 29 October. The Committee is anxious to have your reply on these matters by then so that it can consider whether to seek further oral evidence from you in the light of that reply. Accordingly, I would be grateful if you
could reply by Wednesday 23 October if possible. As this is in Parliamentary recess, I would be grateful if you could copy your response to the Clerk to the Committee, Tracey Hawe.

You may wish to note that I am writing to Ross Finnie MSP, Minister for Environment and Rural Development, in similar terms.

Yours sincerely

Alex Fergusson MSP
Convener
Rural Development Committee
Tel: 0131-348-5636

cc Margaret Smith MSP – Convener, Health & Community Care Committee
Jennifer Smart – Clerk, Health & Community Care Committee
Thank you for your letter of 9 October on Amnesic Shellfish Poisoning. I note that you have written to the Minister for the Environment and Rural Development, Ross Finnie MSP, in similar terms and he will be responding to you on those points that fall within his portfolio.

I further note that the Committee has taken evidence from a number of bodies with an interest in this field, including from the Food Standards Agency Scotland (FSAS). The FSAS, as you are no doubt aware, forms part of the independent Food Standards Agency which is a UK non-ministerial Government Department, set up to protect public health from risks which may arise from the consumption of food, and otherwise protect the interests of consumers in relation to food. As such, it operates uniquely at arms’ length from Ministers, and Agency staff are principally accountable to a Board rather than directly to Ministers. In Scotland, the Board itself is accountable to the Scottish Parliament. In this context, Scottish Health Ministers are advised on all matters relating to food safety by the FSAS. In addition, to safeguard its independence, the Agency has the unique legal power to publish the advice it gives to Ministers. The Agency’s views have, therefore, been sought in seeking to respond to those points you have raised which concern public health.

Proposed Testing Regime

The Committee has sought evidence to the effect that the enforcement regime currently in operation in Scotland does not fully meet the obligations provided for in Council Directive 91/492/EEC.

In relation to ASP, the Directive states that “The total Amnesic Shellfish Poison (ASP) content in the edible parts of molluscs (the entire body or any part edible separately) must not exceed 20 micrograms of domoic acid per gram…” Further, the Directive requires that where monitoring reveals that the requirements of the Directive are no longer being met, the competent authority shall close the production area…concerned until the situation has been restored to normal.”

At the meeting of EU National Reference Laboratories on Marine Biotoxins, held on 15-17 March 2000 in Vigo in Spain, the Group stated that “Placing on the market of whole scallop on the basis of DA (domoic acid) concentration content \( \leq 20 \mu g/g \) in the gonad or the gonad/muscle combined is inappropriate and represents a risk to public health.” An extract from the minutes of the meeting is enclosed.

The interpretation of the Directive has been confirmed by the European Commission as recently as at the Rural Development Committee meeting on 8 October, when Paolo Caricato of the European Commission clearly stated “If a member state decides to avoid the application of the decision, it has to follow Directive 91/492. All scallops in which the contents exceed 20 mg per kg are considered toxic and must stay in the sea.”

b) Request for delay to the introduction of the tiered system

FSAS officials confirmed to the Committee on 8 October that the decision to introduce the tiered system is optional for member states and therefore there is no deadline for its introduction. However, as the European Commission official, Paolo Caricato, made clear, the alternative is to comply fully with the provisions of Council Directive 91/492/EEC.

The urgency for the introduction of the tiered system stems from the fact that, relative to the provisions of the Directive, the tiered approach is a derogation which would allow fishing to continue when otherwise waters would be closed, whilst at the same time ensuring that public health is adequately protected. Should the introduction of a tiered system be delayed indefinitely, then the full provisions of Council Directive 91/492/EEC will have to be applied, leading to potentially longer and more widespread closures. Both measures provide for a higher degree of protection of public health than a system based on testing the gonad.

c) Research activity

Since 2000, the FSAS has commissioned research into the relationship between phytoplankton and algal toxins, due to run between January 2000 and September 2003 and is continuing to provide funding to support the development of rapid detection test kits for ASP and DSP. In addition, FSAS has recently received the final report on a research project intended to help identify appropriate levels of end product testing for various scallop products harvested under the tiered regime. The outcome of this is still under consideration and there is a possibility that this could be used as scientific
evidence for a reduction in the requirement to end product test every batch of scallop product as is currently required under Commission Decision 2002/226/EC, which provides the detailed rules for the tiered system. Various other pieces of research on algal toxin related issues are also underway at a UK level.

d) Research into appropriateness of current action levels in the context of king scallops

In addition to its duty to, first and foremost, protecting consumers, the FSAS also has a responsibility to be proportionate in its response to any potential public health risk. As such, the FSA has indicated that it would be supportive of any research intended to help ensure that the controls applied to scallops meet this criteria.

e) Invitation for the FSAS to write to the European Commission

Following the suggestion from the European Commission for the FSA to write to them on the question of the ASP action level for scallops, a letter to this effect was issued to the Commission by the FSA on 15 October on behalf of the UK.

f) Recommendation for the FSAS to vigorously pursue modification of the Directive and Decision as appropriate

As indicated at point e), the FSA has already written to the Commission on the possibility of reviewing the ASP action levels, and as noted at point c), work has already been completed which it is hoped will result in an amendment to the end product testing provisions of the Decision. Should further UK or European research indicate that there is scope to secure modifications to the Directive that will ensure the most proportionate response to the risks associated with algal toxins, then the FSA will pursue these vigorously.

g) Examination of industry systems and advice on requirements of the Directive and Decision

The FSAS proposals set out in their consultation document on 27 June were intended to provide an opportunity for stakeholders to offer suggestions and comments. Some of the evidence and suggestions for alternative systems which were put forward at the Rural Development Committee had not previously been put to the Agency for consideration. I am advised by FSAS officials, they will be following up on some of the new information that came forward, particularly in respect of traceability as part of their ongoing consultation with stakeholders. As was clearly stated at the Committee, the Agency is open to all suggestions, providing they are able to meet with the requirements of the Directive and/or the Decision as appropriate.

On the question of whether or not certain industry proposals would meet the requirements of the Directive and Decision, this point related to a specific enquiry which was put to the FSA by Mallaig and North-West Fishermen’s’ Association outside the responses to the consultation exercise on the tiered system, and was not related to traceability, quality assurance and education schemes. That proposal was to prohibit the marketing of all soft tissues from king scallops with the exception of white meat and gonad. The Agency has recently responded explaining why this
proposal does not meet the requirements of the Decision or the Directive. A copy of that letter is enclosed for the Committee’s information.

h) Scope of the proposed tiered system

I note the Committee’s concern regarding additional burdens on the industry and the suggestion that some aspects of the regime go beyond what is required by the European regulatory framework. Those parts of the regime which the FSAS have proposed which are not set out in full in the Commission Decision are considered to be elements which are necessary in order to meet certain requirements of the Decision, e.g. the use of tags is intended to meet the provisions for batches to be sealed under the direction of the competent authority. The suggestion that fishermen assist in the collection of samples is not a statutory obligation on fishermen, but it was considered by the FSAS to be a practical solution to ensuring that sufficient samples could be obtained to keep production areas open. Alternative solutions are available which will form part of the Agency’s considerations in putting forward its recommendations to Ministers.

i) Reconsideration of the draft regulatory proposal

As has already been indicated, the FSAS will be considering all alternative proposals put forward during the course of their most recent consultation exercise. Consultation has, however, already been extensive, consisting of three written consultations and two rounds of public meetings, this year and last. There has also been ongoing dialogue through the Scottish Scallop Advisory Committee and through attendance of FSAS officials at various industry meetings. To date, no significantly different proposals have been put forward to that suggested by the Agency which would fulfil the requirements of the Directive and the Decision.

j) Regulatory Impact Assessment

I can confirm to the Committee that the FSAS is required to provide a full Regulatory Impact Assessment along with its recommendations to Ministers. I understand that the Scottish Executive Environment and Rural Affairs Department has recently commissioned a report on the economic impact of algal toxin closures and the FSAS will be liaising with SEERAD and the Scottish Scallop Advisory Committee over the use of this data in developing the RIA.

Finally, you may wish to note that on 18 October the Food Standards Agency Scotland issued a layman’s guide to the scientific report which formed the basis for the European Commission’s proposals for the tiered system. A copy of the report has been sent to the Clerk of the Committee.

A copy of this letter has been sent to Ross Finnie, Minister for Environment and Rural Development, Mary Mulligan, Deputy Minister for Health and Community Care and Tracey Hawe, Clerk to the Committee.

MALCOLM CHISHOLM
Thank you for your letter of 7 November inviting me to give evidence on issues relating to ASP and the scallop industry at the Rural Development Committee on 19 November. I can confirm that I will be able to attend.

Further to Malcolm Chisholm’s letter to yourself of 22 October concerning the Rural Development Committee meeting of 8 October, you will be fully aware of the role of Food Standards Agency Scotland (FSAS) in this matter. You will understand that the Agency’s views have, therefore, been sought in seeking to respond to those points you have raised which concern public health.

a) Request for Delay of implementation of the tiered system

I have been informed by FSAS Officials that any significant delay in the implementation of the proposed tiered system would be detrimental to the industry as there is a duty to move to meet European requirements for testing. I refer you to the section “Request for delay to the introduction of the tiered system” in Malcolm Chisholm’s letter to yourself of 22 October. I shall repeat the points made in Mr. Chisholm’s letter for clarity.

FSAS officials have confirmed that the introduction of the tiered system is optional for member states and therefore there is no deadline for its introduction. However, as the European Commission official, Paolo Carciato, made clear at the Committee meeting on 8 October, the alternative is to comply fully with the provisions of Council Directive 91/492 EEC. As Mr. Chisholm’s letter of 22 October also clearly explains, there is a significant risk that the current enforcement regime in operation in Scotland does not fully meet the obligations of the Directive.

The urgency for the introduction of the tiered system stems from the fact that, relative to the provisions of the Directive, the tiered approach is a derogation which would allow fishing to continue when otherwise waters would be closed, whilst at the same time ensuring that public health is adequately protected. Should the introduction of a tiered system be delayed indefinitely, then the full provisions of Council Directive 91/492/EEC will have to be applied. You will be aware that this may lead to potentially longer and more widespread closures. Both measures provide for a higher degree of protection of public health than a system based on testing the gonad.
b) System for dealing with ASP in The Republic of Ireland

It has been confirmed that The Republic of Ireland comply with Council Directive 91/492/EEC which requires whole animal testing. However, it should be noted that the scallop industry in The Republic of Ireland is considerably different in terms of size to that in Scotland.

c) Research into suitable traceability methods for the tiered system

FSAS officials have confirmed that they are actively investigating possible methods for tracing scallops, crucial to the effective operation of the tiered system. They have met with representatives of two companies that design and retail traceability software. In addition, FSAS officials have made arrangements to visit a large-scale scallop processor to view the traceability system in place at this business. FSAS have assured me that they will consider all suggestions made during these meetings with a view to drawing up a suitable traceability system.

Finally, you may wish to note that on 12 October the Food Standards Agency Scotland wrote individually to representatives of the scallop industry inviting them to meet with FSAS officials to discuss forwarding the proposed tiered system.

A copy of this letter has been sent to Ross Finnie, Minister for Environment and Rural Development, Malcolm Chisholm, Minister for Health and Community Care and Tracey Haue, Clerk to the Rural Development Committee.

Yours Sincerely

Mary

MARY MULLIGAN
Thank you for your letter of 7 November inviting me to give evidence on issues affecting the scallop sector and on the Agricultural Holdings (Scotland) Bill at the next meeting of the Rural Development Committee on 19 November. I can confirm that I will be able to attend.

My letter to you of 23 October reiterated that the Food Standards Agency and the Minister for Health and Community Care were responsible for matters of public health and implementation of the proposed tiered test for Amnesic Shellfish Poisoning. The points you have made regarding delaying the proposed tiered test, providing information on the Republic of Ireland’s ASP testing regime and scallop tracing regimes are for my health colleagues and I note you have written in similar terms to Mary Mulligan.

A copy of this response has been sent to Mary Mulligan.

Yours sincerely,

ROSS FINNIE
3. Placing on the market of whole scallop on the basis of the DA content ≤ 20 μg/g in the gonad or the gonad/muscle combined is inappropriate and represents a risk to Public Health. Similar considerations should be extended to PSP in scallops.

The report of the expert group on AZP that met on 18th March 1999 in Brussels was reviewed. The conclusions of the expert group were supported and extended with extra information as follows:

- AZP represents a risk for consumers and therefore should be included in monitoring.
- Mussels seem the main species affected, but AZP has also been found in oysters.
- Because the presence of the toxin in shellfish can last for a considerable period of time (up to 10 months) year-round monitoring is recommended.
- The whole body of shellfish should be analyzed, because new evidence is now available that shows that the toxin migrates from the hepatopancreas to the meat.
- Current available analytical methodologies include the rat bioassay, the mouse bioassay (Yasumoto, 1978, 24 hrs.) and LC/MS.
- The mode of action of AZP is not known. Sataki and Yasumoto are the only researchers who seem to have small amounts of standard available.
- AZP should not be included in the DSP complex. Therefore the NRL group strongly recommended appropriate amendment of Directive 91/492/EEC.

11. Miscellaneous

It was noted that the impact of the Chemical Weapons Convention, which restricts the transfer of saxitoxin for sanitary control, monitoring and research, has led to considerable difficulties. The group insists that this problem be given the highest attention in the European Commission, particularly in view of the fact that the Commission has funded work that led to the development of BCR CRMs, that cannot now be made available to the laboratories that require them.

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Extract from the Minutes of the third meeting of EU National Reference Laboratories on Marine Biotoxins (15-17 March 2000, Vigo, Spain)
THIRD ALTERNATIVE TO SAFEGUARD HUMAN HEALTH FROM THE EFFECTS OF ALGAL TOXINS IN SCALLOPS

Thank you for your letter of 19 September concerning the above. As we discussed, I have sought guidance on the interim measures you have proposed in the context of their ability to meet community obligations, and the following sets out the advice of the Food Standards Agency based on that guidance.

You have proposed two basic points from which we might seek to take this issue forward. First that the current "pragmatic" levels be replaced with safety levels that have been founded in dedicated science appropriate to scallops; and second, that in the meantime, until the science has been worked through, that interim measures should be introduced.

On the first point, I can advise you that the Food Standards Agency has now written to the European Commission (DG SANCO) on exactly this issue, and I will keep you fully informed of their response as soon as it is forthcoming. And I should also say that the Food Standards Agency is entirely supportive of the principle of ensuring that methods of risk management are proportionate to the actual risk to public health - though, of course, we do have to operate within the parameters of European Community law. Clearly, however, even assuming the Commission responded positively and a review of the action level for scallops is undertaken, the scientific process to gather and review the necessary data will take some time. I am, though, fully aware that the industry is already attempting to get this particular ball rolling through the proposals for a portion-size study into scallops. In addition, should the outcome from any such review result in a
recommendation to alter the action level (either up or down), this will require an amendment to Council Directive 91/492/EEC (or any future legislation arising from the work on the consolidation of the hygiene Directives). This again, would take some time. In other words, this is not a short-term solution and is more likely to take years rather than months. However, this is a point which you well understand and hence your proposal for the introduction of interim measures.

On this point, I very much regret that I have to advise you that there does not appear to be any scope for the adoption of interim measures. As you know, the relevant Community law is contained in Council Directive 91/492/EEC on production and placing on the market of live bivalve molluscs and Council Directive 91/493/EEC on the production and placing on the market of fishery products. These Directives provide for the harmonisation of the Community market in these products and allow for them to be placed on the market anywhere in the Community as long as they comply with the requirements of the Directives. There does not appear to be anything that allows member states to unilaterally restrict what parts of live bivalve molluscs can be placed on the market. Importantly, even if there were scope to try and prohibit the placing on the market in Scotland, it would not be possible to apply this prohibition to imported scallops that complied with the Directive. Even setting aside the economic considerations associated with this apparently anomalous situation, this would also give rise to difficulties associated with effective enforcement.

Your suggestion also relies on the European Commission agreeing that only the gonad and not the whole animal need be tested. This would be difficult given the very clear statement from Paolo Caricato at the Rural Development Committee on 8 October when he made clear that member states must either comply with the Directive or the Decision, both of which require testing to be carried out on the whole animal.

I am sorry that I am unable to give you any more heartening news on your proposals for interim measures, though I hope you can take some encouragement from the fact that we are seeking the Commission’s views on the possibility of revisiting the action level.

A copy of this letter has also been sent to Mr Alex Fergusson MSP, in his capacity as Convener of the Rural Development Committee.

Yours sincerely

\[Signature\]

Martin Reid
General Food Hygiene

6th Floor, St. Magnus House, 25 Guild Street, Aberdeen AB11 6NJ
Tel: 01224 285134 Fax: 01224 285168 Email: martin.reid@foodstandards.gsi.gov.uk
Our Website address is: www.food.gov.uk
Agricultural Holdings Bill – Stage 1

Further Written Submission received after the meeting

The Scottish Gamekeepers Association (SGA) remains fundamentally opposed to the Absolute Right to Buy for tenant farmers with a secure tenancy and we are concerned that the way questions were put to the team giving oral evidence elicited misleading responses about our position. We therefore seek to clarify our position.

The committee did not seem to understand that selling a portion of an estate would impact on other parts of that estate.

If the foyer of the Committee Rooms building were sold, would MSPs not find it difficult to conduct their business? If the person who bought the foyer decided to open a burger bar for the public, what effect would that have on the running of the building?

We do not accept that “Good landowners have nothing to fear”. Tenants will decide on a financial basis whether to buy or not; it will have nothing to do with whether they have good relationships with their estate. Indeed, we have heard conflicting evidence from 2 tenant farmers on the same estate – one of whom wishes to buy and one of whom does not.

Mr Ewing maintains that separating Sporting Rights from land ownership, coupled with complicated statutory protection for keepers and wildlife will allow the current pattern of integrated land use to continue. An ‘agreement’ is only worthwhile if it is easily enforceable legally. We therefore do not agree with Mr Ewing’s conviction.

Farmers buying land will expect to maximise their investment. They will find the cost of compliance eats heavily into

a) Profits: Estate roads, track, bridges and fences are currently maintained at estates’ expense with tenants sometimes being asked to contribute towards expenses. If tenant farmers own the land they will be responsible for such expenditure and it will be their responsibility to seek a contribution from the Sporting Right Owner. Furthermore, the standards required for sporting interests exceed that required for a tractor. How will this be reconciled without cumbersome legal expenses?

b) Their ability to manage the land as they want: A piece of wetland will support many species of upland wader (many of which are in decline). The farmer will want to maximise his land usage and the most sensible course of action from his point of view will be to drain the land... Currently the estate supports the conservation of the wildlife and habitat through its sporting management. We see no valid reason why a farmer should be grant-aided to carry out this work instead.

If we were to accept the premise that “Good landowners have nothing to fear” - which we do not - it would follow that only tenants of ‘bad’ landlords would exercise their right to buy; in which case, friction already exists. Given the length of time it takes to gain a hearing in the Land Court, disruption of game management and shooting could take place virtually unhindered.

For example:

1. A sporting guest, paying upwards of £540 plus VAT for 2 days stalking, could have both days disrupted by a farmer gathering in his sheep, despite any agreement that he should not do so without agreement with the Sporting Right Owner.

The same applies to grouse shooting guests paying £10,000! If sporting guests’ days are ruined by friction, disruption and/or verbal abuse, they will resolve not to come to Scotland again. By the time complaints are heard by the Land Court, the damage will have been done.

Without the sporting guest to pay gamekeepers wages and to stay in our hotels/B&Bs – rural employment will be put at risk. The gamekeeper will lose his job and wildlife & their habitats will suffer.
2. An SGA member reports that his employer leases the sporting from an estate, that much of the shooting is sold to sporting guests and that this lease forms part of our member’s employment.

The sporting lease operates on ground also rented by a tenant farmer with a secure tenancy. On a number of occasions our member has encountered verbal abuse and unreasonable physical restrictions placed on his gaining access to the ground including:

- Being told not to take vehicles across fields so as not to put wheel marks through the field, despite those fields having deep tractor ruts close by leading into a mud bath where animals were being fed.

- The farmer’s wife refusing ‘on foot’ access to sporting guests and beaters because she ‘didn’t want her horses disrupted’ and making it plain that this was ‘non-negotiable’ despite her having other suitable fields in which to put her horses. She told our member that “If I see anyone in that area, I will shoot them!”

- Despite a written list of shoot dates being made available to the farmer in advance of the season, his wife confronted our member at the start of a shoot day and demanded advance telephone notification of shoots. When asked if she had received a written list she answered that ‘it is in the house somewhere’. We would like to inform the committee that this is not an isolated occurrence and that more than one member has reported this type of lack of co-operation.

- Unreasonable behaviour of this nature is unnecessary and embarrassing but it exists. If farmers buy their land, this situation will be exacerbated in many areas, particularly where friction already exists, where the farmer is unable to diversify in the way he wishes or if he is anti-shooting.

In England, where the sporting right can be held in isolation to the agricultural right of occupation, the sporting and conservation interest has suffered dramatically. 40% of the heather in England and Wales has disappeared since the end of World War 2 because the agricultural interest has held dominance over the sporting and habitat management interest. As a consequence the range of the red grouse has contracted and within the last 2 weeks the grouse (indigenous only to the British Isles) has been elevated to the amber list of endangered birds. The SGA will vigorously object to any moves that would further endanger this bird.

The SGA considers the Pre-emptive right to buy to potentially be just as disruptive to game shooting, management and rural employment as the Absolute Right.

Finally, Mr Lochhead sought to justify a separation of Sporting Rights from land ownership by suggesting that where owner/occupiers exist, estate management does not suffer. We would like to point out that owner/occupiers do not form part of an estate. Any shooting rights would therefore be leased from that owner/occupier and Mr Lochhead’s hypothesis is therefore incorrect.

We would be happy to answer any questions on this evidence that the committee might have.

Scottish Gamekeepers Association, Braemar, Aberdeenshire, AB35 5XQ 20th November, 2002
Issues affecting the Scottish scallop industry

Thank you for your letter of 23 October and subsequent letter of 12 November, replying to points made in my letters of 9 October and 7 November. In those letters I put to you the Committee’s concerns and recommendations regarding the proposed tiered-testing regime for Amnesic Shellfish Poisoning (ASP), and the proposed technical conservation measures for the scallop fishery. Thank you also for giving evidence to the Committee at its meeting on 19 November, along with Mary Mulligan MSP, Deputy Minister for Health and Community Care.

Following that meeting the Committee has agreed a number of further recommendations, which build on the points put to you in my earlier letters. I hope that you will address these, in cooperation with Mary Mulligan where appropriate.

a) The Committee remains concerned that the Food Standards Agency Scotland (FSAS) did not involve the scallop industry in designing the proposed testing regime prior to putting it out for formal consultation. We consider that this failure may have caused the proposed system to be more contentious and divisive than might otherwise have been the case. While recognising that the FSAS has conducted a number of consultation exercises, the Committee wishes to stress that the FSAS should proceed at all times in constructive and transparent partnership with the industry. Such an approach would maximise the opportunity for arriving at a safe, appropriate and proportionate regime. In this regard, the Committee is grateful for the commitment by the FSAS to discuss any alternative testing options with the industry.

b) The Committee is grateful for the undertaking by the FSAS to provide a copy of their letter of 15 October to the European Commission, and looks forward to receiving a copy in early course. The Committee also considers that the data on which the ASP working group report was based should be released to industry representatives immediately. In this regard the Committee welcomes Mary Mulligan’s commitment that “All relevant information should be made available to all those who are involved”.

c) The Committee was pleased to note that the FSAS has begun to study industry traceability systems, following evidence heard by the Committee on 8 October. We recommend that this is pursued thoroughly, and that any proposed traceability system be thoroughly piloted before being given statutory force.
d) The Committee is aware that several important pieces of research are currently being commissioned or are in progress. The Committee notes that research into portion size and into scallop biochemistry may be particularly important in pursuing a revision of the Commission Decision and Directive. We would urge the Scottish Executive to use all possible influence to ensure the support and funding of this research as a matter of urgency, whether through the Financial Instrument for Fisheries Guidance or other means.

e) The Committee acknowledges the status of the European legislative framework and the UK’s obligations. Nonetheless the Committee noted carefully Mary Mulligan’s statement only that delay in implementing a revised regime could not be indefinite. Given the absence of incidence of ASP due to scallops, the Committee is not persuaded of the need to change current procedures with undue haste. The Committee therefore strongly urges Ministers to delay any decision on a new testing regime until the conclusions of these main pieces of research have been received, and amendment to the Decision and Directive pursued. The Committee further urges that any revised regime should be brought forward only after the industry has been fully involved in discussions in the light of all available scientific evidence.

f) On technical conservation measures, the Committee remains concerned about the objectives and impact of the proposals. The Committee welcomes your commitment to study research such as the ‘Ecodredge’ report carefully before proceeding, and to consider any alternatives to the proposed conservation measures. The Committee notes that there are differences of opinion within the industry on the proposals. Given the time which has elapsed since the original consultation on these proposals, the Committee strongly recommends that any revised proposals you bring forward should be subject to a further process of formal consultation. The Committee is particularly concerned to emphasise the economic importance of exports to the Spanish market, and the likely disruption to supplies for this market if a weekend ban is imposed. On 19 November you also undertook to advise the Committee of the number of unissued scallop licences, and when an application for a licence was last received by your Department. I would be grateful to receive your reply on those points.

I would like to emphasise the Committee’s very considerable concern over these issues and the way in which they have been pursued. I hope that you will address the Committee’s recommendations as a matter of urgency, and I look forward to hearing from you.

You may wish to note that I am writing to Mary Mulligan in similar terms on the ASP issue.

Yours sincerely

Alex Fergusson MSP
Convener
Rural Development Committee
Tel: 0131-348-5636

cc Margaret Smith MSP – Convener, Health & Community Care Committee
Jennifer Smart – Clerk, Health & Community Care Committee
Anmesic Shellfish Poisoning

I am grateful to have received Malcolm Chisholm’s letter of 22 October and your subsequent letter of 14 November, replying to points made in my letters of 9 October and 7 November. In those letters I put to you the Committee’s concerns and recommendations regarding the proposed tiered-testing regime for Amnesic Shellfish Poisoning (ASP). Thank you also for giving evidence to the Committee at its meeting on 19 November, along with Ross Finnie MSP, Minister for Environment and Rural Development.

Following that meeting the Committee has agreed a number of further recommendations, which build on the points put to you in my earlier letters. I hope that you will address these, in co-operation with Ross Finnie where appropriate.

a) The Committee remains concerned that the Food Standards Agency Scotland (FSAS) did not involve the scallop industry in designing the proposed testing regime prior to putting it out for formal consultation. We consider that this failure may have caused the proposed system to be more contentious and divisive than might otherwise have been the case. While recognising that the FSAS has conducted a number of consultation exercises, the Committee wishes to stress that the FSAS should proceed at all times in constructive and transparent partnership with the industry. Such an approach would maximise the opportunity for arriving at a safe, appropriate and proportionate regime. In this regard, the Committee is grateful for the commitment by the FSAS to discuss any alternative testing options with the industry.

b) The Committee is grateful for the undertaking by the FSAS to provide a copy of their letter of 15 October to the European Commission, and looks forward to receiving a copy in early course. The Committee also considers that the data on which the ASP working group report was based should be released to industry representatives immediately. In this regard the Committee welcomes Mary
Mulligan's commitment that “All relevant information should be made available to all those who are involved”.

c) The Committee was pleased to note that the FSAS has begun to study industry traceability systems, following evidence heard by the Committee on 8 October. We recommend that this is pursued thoroughly, and that any proposed traceability system be thoroughly piloted before being given statutory force.

d) The Committee is aware that several important pieces of research are currently being commissioned or are in progress. The Committee notes that research into portion size and into scallop biochemistry may be particularly important in pursuing a revision of the Commission Decision and Directive. We would urge the Scottish Executive to use all possible influence to ensure the support and funding of this research as a matter of urgency, whether through the Financial Instrument for Fisheries Guidance or other means.

e) The Committee acknowledges the status of the European legislative framework and the UK’s obligations. Nonetheless the Committee noted carefully Mary Mulligan’s statement only that delay in implementing a revised regime could not be indefinite. Given the absence of incidence of ASP due to scallops, the Committee is not persuaded of the need to change current procedures with undue haste. The Committee therefore strongly urges Ministers to delay any decision on a new testing regime until the conclusions of these main pieces of research have been received, and amendment to the Decision and Directive pursued. The Committee further urges that any revised regime should be brought forward only after the industry has been fully involved in discussions in the light of all available scientific evidence.

I would like to emphasise the Committee’s very considerable concern over these issues and the way in which they have been pursued. I hope that you will address the Committee’s recommendations as a matter of urgency, and I look forward to hearing from you.

You may wish to note that I am writing to Ross Finnie in similar terms.

Yours sincerely

Alex Fergusson MSP
Convener
Rural Development Committee
Tel: 0131-348-5636

cc Margaret Smith MSP – Convener, Health & Community Care Committee
Jennifer Smart – Clerk, Health & Community Care Committee
Thank you for inviting me to the Rural Development Committee’s meeting on 19 November to give evidence on issues affecting the scallop sector.

During our discussion on proposed scallop technical conservation measures and on the issue of unused scallop licence entitlements more specifically, Stewart Stevenson asked how many scallop licences had not been issued and when I had last received an application for a new licence.

A restrictive licensing scheme for scallop vessels using mechanical dredge was introduced in 1999. At that time, the licences of vessels with a track record in the scallop fishery were endorsed with an entitlement to fish for scallops and only vessels with such an endorsement can fish for scallops by mechanical dredge. There has been no application process for such an endorsement since 1999. There are currently 193 Scottish vessels licensed to fish for scallops. Of these 193 vessels, only 110 have caught scallops in 2002. Of the 110 vessels that have used their scallop entitlement in 2002, 51 caught only scallops and no other species.

I trust this answers Mr Stevenson’s question.
Dear Alex,

Thank you for your letter of 28 November, following the last Rural Development Committee meeting of 19 November, setting out further recommendations regarding the proposed tiered testing regime for ASP. I understand that you have written to Ross Finnie in similar terms and that he will be responding to you in due course.

As with previous correspondence, you will understand that the views of the Food Standards Agency Scotland (FSAS) have been sought in addressing those points you have raised which concern public health.

a) FSAS should proceed at all times in a constructive and transparent manner with the industry

Whilst I understand the Committee’s continuing concern over this matter, the FSAS has made it very clear that the system set out in the consultation is simply their proposal for meeting the requirements of the Decision. They are very open to the possibility of alternative solutions provided they can meet with the legal framework and are safe, enforceable and proportionate. FSAS would now like to move forward from this point and the Committee should be assured that recent meetings and communications between FSAS and industry representatives have indeed been open and positive.

b) FSAS undertaking to provide a copy of their letter to the European Commission

A copy of the above letter is enclosed for the Committee’s information. I can also confirm that FSAS will make all relevant information including the data it holds in respect of the ASP Working Group available to industry representatives.
c) Traceability systems

FSAS officials have had a number of constructive discussions with industry recently, e.g. on the possibility of adapting existing documentation, already used by fishermen, to meet the requirement for Registration documents. FSAS has undertaken to investigate this further in close liaison with industry. In addition, FSAS officials have now visited a large-scale scallop processor in the locality, to view the traceability system in place at this business. The FSAS has indicated that any proposed traceability system will be piloted before being given statutory force.

d) Support and funding for research

As previously indicated, the FSAS would be supportive of any research intended to help ensure that the controls applied to scallops are proportionate to any potential risk to public health. An approach for part funding for the proposed portion size study is currently under consideration.

e) Request for delay of implementation of the tiered system

On this point, as has been made very clear to the Committee, the introduction of the tiered approach is not mandatory. However, if it is not introduced, then the Scottish Executive must then ensure that it nonetheless meets its obligations under European Law. As a member of the European Union, the UK and its constituent parts are not at liberty to select which pieces of Community Law it will apply. With this in mind I can assure you that any new regime will not be implemented with undue haste but equally, delays cannot be justified which could result in public health being put at risk.

Finally, you will wish to note that there was a meeting of the Scottish Scallop Advisory Committee on 11 December, at which members were updated as to the current status of work in progress on the proposed tiered testing regime and on several pieces of research currently being commissioned. The meeting took place in a positive atmosphere and I am sure that all involved wish to see this as a model for future discussions.

A copy of this letter has been sent to Ross Finnie, Minister for Environment and Rural Development, Malcolm Chisholm, Minister for Health and Community Care, Margaret Smith, Convener, Health & Community Care Committee, Jennifer Smart, Clerk to the Health and Community Care Committee and Tracey Hawe, Clerk to the Rural Development Committee

Yours sincerely,

Mary Mulligan

MARY MULLIGAN
Thank you for your letter of 28 November on issues affecting the Scottish scallop industry. I note that you have written to Mary Mulligan in similar terms, and I believe she has replied to you on the issues relevant to her portfolio.

I can assure you that the Scottish Executive is actively pursuing the case for supporting and commissioning new research to inform decisions relating to the ASP regulatory framework. The Scottish Scallop Advisory Committee met recently and agreed that a sub-group of the Committee would work in partnership to commission, support and coordinate new research, which may be presented to the Commission in due course. The group (which brings together SEERAD and FSAS officials, scallop industry representatives and Fisheries Research Services) will meet early in January to progress matters further.

On scallop technical conservation measures, I confirmed to the Committee on 19 November that I would not be taking any decisions on the proposed measures before seeing the conclusions of the "ECODREDGE" report. I understand that a final report should be available early in the New Year. Should it become necessary to make significant changes to existing proposals after I have considered the conclusions of "ECODREDGE", then it may be appropriate to consult further.

Finally, you will hopefully have received my letter of 4 December relating to scallop licences, which I hope the Committee found helpful.

ROSS FINNIE

Copy to:
Mary Mulligan, Deputy Minister for Health & Community Care
Margaret Smith MSP, Convener of Health & Community Care Committee
Jennifer Smart, Clerk, Health & Community Care Committee
Msr Paolo Caricato  
European Commission  
DG SANCO  
Brussels

15 October 2002

Dear Paulo,

COUNCIL DIRECTIVE 91/492/EEC: ASP toxin levels for king scallops

First of all I would like to thank you for your most helpful contribution to the discussion at the meeting of the Scottish Parliament’s Rural Development Committee on 8 October – I hope you found it a stimulating experience! Your very clear explanation of the requirements of the Directive and your confirmation of our interpretation of the Commission Decision were particularly useful. I hope that this will now assist the Food Standards Agency to move this issue forward with our stakeholders in the context of a better appreciation of the legislative framework within which we must operate. We will of course keep you apprised of how things develop with our proposals for implementing Commission Decision 2002/226/EEC in Scotland over the next few weeks and months.

In response to the wider issue of the provisions of Council Directive 91/492/EEC raised by some members of the Scottish Parliament’s Rural Development Committee, you suggested that it might be appropriate for the Food Standards Agency to write to the
Commission on the question of the ASP action level (20 micrograms per gram of flesh) in the context of king scallops (*Pecten maximus*). This suggestion was supported by the Committee who has urged the Agency in Scotland to take up this invitation immediately.

As you are aware, independent experts on the Committee on Toxicity (CoT) examined the toxicological data on this issue last year and concluded that there were insufficient data to set a toxicologically based safety limit. They also commented to the effect that the current action level was pragmatic insofar as it appeared to be protecting public health.

I would now be grateful if you would advise me on whether or not the European Commission has any new evidence that might be used to help inform the debate on the above. It would also appreciate your thoughts on how this might be pursued with the Commission's scientific experts.

It was good to be able to discuss this issue with you again in person, and I look forward to receiving your comments on these issues in due course.

Yours sincerely

Martin Reid

*General Food Hygiene Branch*

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