TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA

11th Meeting, 2002 (Session 1)

Wednesday 27 March 2002

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

1. Item in Private: The Committee will consider whether to take agenda items 5, 6, and 7 in private.

2. Subordinate Legislation: The Committee will consider the following affirmative instrument—
   
   The Bus User Complaints Tribunal Regulations 2002

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

   The Mobility and Access Committee for Scotland Regulations 2002, (SSI 2002/69)

4. Public Petition: The Committee will consider Petition PE470 by Mr Anthony Jackson on behalf of the Munlochy Vigil on Genetically Modified Crops.


6. Rail Inquiry: The Committee will consider a possible remit for its inquiry into the rail industry in Scotland.

7. Witness Expenses: The Committee will consider whether to pay expenses for a witness who gave evidence as part of the Committee's aquaculture inquiry.
The following public papers are relevant for this meeting:

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Subject: The Bus User Complaints Tribunal Regulations 2002

Meeting No: 11th Meeting, 2002

Meeting Date: 27 March 2002

Author: Note by the Assistant Clerk

Background

1. The Bus User Complaints Tribunal Regulations 2002 was laid on 26 February 2002 and has been assigned to the Transport and the Environment Committee for consideration. It is accompanied by an Executive note.

2. The Report is laid under an affirmative procedure which means that Parliament must approve the report before its provisions may come into force. The sponsoring Minister (Wendy Alexander, Minister for Enterprise, Transport, and Lifelong Learning) has accordingly lodged a motion that the Transport and the Environment Committee recommend approval of the instrument (S1M-2897). This motion is supported by the Deputy Minister for Enterprise, Transport, and Lifelong Learning, Lewis Macdonald, who will be attending the meeting of the Transport and the Environment Committee to move the motion.

3. Parliament has until 21 April 2002 to deal with the instrument and the Transport and the Environment Committee is required to report on the instrument by 15 April 2002.

Details of the Instrument

4. The purpose of the instrument is to establish the Bus User Complaints Tribunal for the purpose of providing bus users with a voice in securing better bus services through the introduction of a statutory appeals procedure.

Subordinate Legislation Committee

5. The Subordinate Legislation Committee considered the instrument at its meeting on 5 March 2002 and agreed to raise points with the Executive on the instrument. The Committee considered the instrument again on 12 March 2002, and in its 15th report, the Committee determined that the attention of the Parliament should be drawn to the instrument. The relevant extract from the Report is attached as an Annex to this note.
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Format of the Debate

6. The Deputy Minister for Enterprise, Transport, and Lifelong Learning and supporting Officials will be attending the meeting of the Transport and the Environment Committee on 27 March to answer any questions members may have on the instrument. The Minister will then move the motion S1M-2897 and the Committee may formally debate the motion.

7. Under Rule 10.6 the Committee is required to report to the Parliament with its recommendation on whether to approve the instrument.

Alastair Macfie
Assistant Clerk
Transport and the Environment Committee
March 2002
TRANSPORT AND THE ENVIRONMENT COMMITTEE

ANNEX

Extract from Subordinate Legislation Committee 15th Report 2002

The Bus Users Complaints Tribunal Regulations 2002 (Draft)

Background
1. The Committee asked the Executive a number of questions on the instrument.

Question 1
2. Section 41(3)(j) of the parent Act provides that regulations may include provision for appeals against determinations of the Tribunal. In the exercise of this power, regulation 9 provides for an appeal from a determination of the Tribunal to the convener of the Tribunal. It seemed likely to the Committee that the convener would have taken part in any determination that is the subject of an appeal. Indeed, it seemed possible, given the absence of any provisions in the Regulations to deal with the procedures of the Tribunal, that the convener alone might have made the determination, although there might be doubts as to whether this would be within the powers of the Tribunal (see below). The Committee considered that a decision of the Tribunal might be thought to involve a "civil right" within the meaning of Article 6 ECHR. The Executive was therefore asked to explain the compatibility of regulation 9 with Article 6 of the ECHR.

Answer 1
3. The Executive’s reply is reproduced at Appendix A. On the Committee’s concerns regarding the independence of the convener for the purposes of hearing an appeal, the Executive states that, by virtue of regulation 4, it is for the Tribunal to determine its own procedure. It will therefore be for the Tribunal to decide which, if any, original complaints the convener should hear. The Regulations do not require the convener to hear original complaints. In determining its procedure, the Tribunal may therefore decide that the convener should act in an appellate capacity only. The Tribunal will be aware that any determinations they make have to be in accordance with the law and principles of natural justice.

4. In any event, as the Executive does not accept that the Tribunal will be involved in determining civil rights and obligations it therefore considers that Article 6 will not apply. The appeal to the convener is considered to be sufficient in light of the actual remit of the Tribunal. The outcome of the Tribunal will not affect the complainant’s rights at common law.

Comment 1
5. The Committee noted that the provisions of this instrument have certain similarities to the arrangements for Employment Tribunals set out in SI 2001/1170. However, although those Rules provide for a Tribunal to review its own decisions on grounds similar to those in the present instrument, there remains the possibility of a further appeal to the Employment Appeals Tribunal. The provisions in the current Regulations appear to be more akin to a "review" rather than an appeal.
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6. The Executive appears tacitly to acknowledge the difficulties of providing for an "appeal" to the convener and suggests that the Tribunal may provide that the convener should act in an appellate capacity only. It appears to the Committee, however, that there might be doubts as to the powers of the Tribunal so to provide given the wording of the Regulations which provides for complaints to be determined by the “Tribunal” (which would include the convener).

7. The Executive also maintains that the Tribunal will not be determining "civil rights" within the meaning of Article 6. However, the Committee notes that the Tribunal has the power to award compensation which the bus operators are bound to pay. It is clear therefore that, although it must be conceded that bus users' complaints may not be in the same category of importance as employment rights, determinations of the Tribunal have practical consequences both for bus users and for bus operators. In the light of the developing jurisprudence in this area it seems probable that arguments could be advanced for the application of Article 6 in the present instance.

8. The Committee recalls the situation that arose in connection with the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000, (SSI 2000/59) where provision was made for an appeal to the Scottish Ministers from a decision by a local authority to refuse a person a disabled parking permit. It was considered that, to ensure compliance with the ECHR, a further appeal to the courts was required. Since the primary legislation did not permit such a provision to be made, the relevant Act was amended to remedy the defect1. It should be noted, furthermore, that in those Regulations the first appeal was to a person different from the original decision-taker.

9. It therefore appears to the Committee that, in providing for an appeal only to a person who may have taken part in the original decision, the draft Regulations represent at best an unusual or unexpected use of the powers conferred by the enabling statute. The appeal provisions also appear to raise a devolution issue to the extent that there are doubts as to whether they are compliant with Article 6 ECHR for the reasons given above. The Committee therefore draws the Regulations to the attention of the Parliament and lead committee on these grounds.

Question 2

10. There appeared to the Committee to be no clear provision in the Regulations as to what will happen as a result of an appeal. Regulation 10 permits the Tribunal, on making a determination, to require the bus operator to pay compensation to the complainant. However, an appeal will not be decided by the Tribunal but by the convener and compensation is, in any event, payable in terms of the Regulations only on a determination, not as the result of an appeal. The Committee asked for an explanation.

Answer 2

11. The Executive responded that regulation 9(3) enables the convener to issue a substitute determination. It is envisaged that any substitute determination can include provision as to compensation as though it were a determination made by the
Tribunal. The Executive accepts, however, that the drafting could have made this clearer.

Comment 2
12. Regulation 9(3) as the Executive states, permits the convener to issue a substitute determination but only if the convener upholds an appeal. There is no provision for the convener to uphold an appeal in part only.

13. The Executive states that it is envisaged that a substitute determination may include provisions as to compensation but the Regulations, including regulation 9, make a distinction between determinations and awards of compensation. There must therefore be doubts as to whether it would be within the powers of the convener to make such an award. There are also doubts as to whether it would be open to the convener to uphold an appeal in part only.

14. The Executive acknowledges that the drafting of the Regulations is faulty in this respect. The Committee therefore draws the attention of the lead committee and the Parliament to the draft Regulations on the ground of defective drafting to this extent, acknowledged by the Executive.

Question 3
15. The Executive was asked to clarify why regulation 9(2) provides for appeals to be made to the Tribunal when, under regulation 9(1), applications for appeals are to be made to, and decided by, the convener.

Answer 3
16. The Executive has thanked the Committee for this observation. The convener will hear any appeal. It may have been clearer if regulation 9(2) had specified that the appeal is made to the convener. In the Executive’s view it is nevertheless clear that an appeal may be made and that the convener will hear the appeal.

Comment 3
17. As the Executive recognises, regulation 9(2) is defectively drafted. The Committee therefore draws the draft Regulations to the attention of the lead committee and the Parliament on that ground.

Question 4
18. The Committee asked for clarification that the "complaint" referred to in regulation 11(1)(c) is a written complaint, within the terms of reference of the Tribunal.

Answer 4
19. Section 41(1) of the Transport (Scotland) Act 2001 empowers the Tribunal to determine "written complaints". The reference in regulation 11 to "complaint", in the Executive’s view, must therefore relate to "a written complaint".
Comment 4
20. It is not as obvious to the Committee as the Executive maintains that the word "complaint" would have the meaning indicated. As the Executive indicates in its response to question 6 below, it is envisaged that the Tribunal may receive complaints other than "written complaints" or "relevant complaints". The draft Regulations use the word "complaint" to mean many different things. More specifically, they refer, for example, to "written" complaints in, for example, regulation 5. In the Committee's view, the use of terms should be consistent in any piece of legislation, the more so when, as here, the same word is used to mean different things in the one legislative instrument. To that extent, regulation 11(1)(c) is in the Committee's view, defectively drafted. The Committee therefore draws the instrument to the attention of the lead committee and the Parliament on that ground.

Question 5
21. Although regulation 11 appears to consist of one paragraph only, paragraph number "(1)" has been inserted at the beginning of the regulation. The Executive was requested to confirm that no text had been omitted from regulation 11.

Answer 5
22. The Executive has thanked the Committee for pointing out that this paragraph number has been inserted at regulation 11. No further text has been omitted from regulation 11. The insertion of the paragraph "(1)" is a typographical error for which the Executive apologised.

Comment 5
23. The Committee considers that, although the insertion of the paragraph number may be a typographical error, in this instance it is misleading to the reader who may wonder if some text has been omitted. In the Committee's view, it therefore constitutes defective drafting that the Committee draws to the attention of the lead committee and the Parliament on that ground.

Question 6
24. The Committee asked the Executive to which complaints the words "total number of complaints received" in regulation 14(a) relate.

Answer 6
25. The Tribunal is empowered by section 41(1) to make determinations on written complaints in relation to "relevant complaints" which have been made. A relevant complaint is defined in section 41(7). It is possible that other complaints may be made to the Tribunal which do not fall within the definition of "relevant complaint". The Tribunal is not empowered to deal with these complaints but the purpose of regulation 14(a) is simply to record the total number of overall complaints including "relevant complaints" that are received by it.

Comment 6
26. The Executive has supplied the additional information requested by the Committee. It seems to the Committee, however, that the response indicates the
difficulties inherent in using the term "complaint" to mean different things in the same instrument as mentioned above. It would have avoided confusion had the text of regulation 14(a) indicated that "complaints" in that context included all complaints made to the tribunal whether or not they were "relevant complaints". The Executive does not indicate whether the term is intended to include only written complaints or whether it would include complaints made orally.

27. The Committee therefore draws the provision to the attention of the lead committee and the Parliament on the grounds that its meaning could have been clearer and for the same reason is defectively drafted.

Question 7
28. The Committee noted that regulation 14(b) obliges the Tribunal to make a report to the Scottish Ministers on "the number of relevant complaints". "Relevant complaints" are however defined in the parent Act as complaints made to the bus operators. The Committee asked how the Tribunal would be able to fulfil this obligation in the absence of any requirement on the bus operators to supply the relevant data to the Tribunal.

Answer 7
29. The Executive has confirmed that the Committee is correct in thinking that there is no requirement on the bus operators to supply relevant data in relation to the number of "relevant complaints" that it receives to the Tribunal. It explained that the purpose of regulation 14(b) is to provide details of the number of relevant complaints dealt with by the Tribunal rather than the total number of relevant complaints dealt with by the bus operator.

30. The Executive accepts that the drafting of regulation 14(b) could have been clearer but believes that the Tribunal will be aware that the report to the Scottish Ministers should contain details of the relevant complaints that they deal with.

Comment 7
31. The Executive has explained the purpose of regulation 14(b). Unfortunately, the provision as drafted does not appear to reflect the intention. It may be that, in practice, any difficulties can be resolved by administrative means. This does not, however, detract from the fact that regulation 14(b) is defectively drafted as acknowledged by the Executive. The Committee therefore draws the attention of the lead committee and the Parliament to regulation 14(b) on the ground that it is defectively drafted, acknowledged by the Executive.

Question 8
32. The Committee observed that regulation 14 does not provide for inclusion in the Tribunal’s report of the number of appeals and asked if this is the intention.

Answer 8
33. The Executive agrees that regulation 14 does not specifically provide for inclusion within the report of the number of appeals to be made by the Tribunal to the Scottish Ministers. The Executive considers, however, that the information which has
to be provided by virtue of regulation 14(e), namely the nature of any determinations made, will identify whether the determination was originally made or was a substitute determination made by the convener under regulation 9(3).

Comment 8
34. It is not clear from the Executive’s reply whether or not it intended to require the Tribunal to report on the number of appeals. This is primarily, of course, a matter of policy but it does appear that this might have been the intention. It is also not clear whether the term "determination" is intended to cover substitute determinations on appeal or only determinations of the convener. Again, the looseness of the use of words causes confusion.

35. If the Executive intended to require information on appeals, then a reference to determinations alone would not in any event be sufficient as this could not include unsuccessful appeals, substitute determinations not being issued in such circumstances. It will also be noted that, as determinations are treated as different from awards of compensation as mentioned above, the reporting requirement would not cover details of any compensation awarded.

36. The Committee therefore draws the attention of the lead committee and the Parliament to regulation 14 on the grounds that its meaning could be clearer and that, to the extent that it may not fulfil the policy intention as the Executive’s response appears to suggest, it is defectively drafted.

Question 9
37. The Executive was asked to explain the purpose of the words "from the date of coming into force of these Regulations" in regulation 3.

Answer 9
38. The words "from the date of coming into force of these Regulations" in regulation 3 was inserted merely to clarify when the Tribunal would be effective from. While these words are, strictly speaking, unnecessary they do not in any way prevent the regulations operating as intended.

Comment 9
39. As the Executive appears to acknowledge, the words in question are unnecessary. Unless it had been intended that the Tribunal would be established at some future date, when it would, of course, have been necessary to specify a date in the Regulations, there should be no doubt as to when the Tribunal was to be established. As the Committee has repeatedly observed, it is not good legislative practice to include meaningless words in legislation. Accordingly, to this extent the Regulations fail to comply with good legislative practice. The Committee therefore draws regulation 3 to the attention of the lead committee and the Parliament on this ground also.
On 5 March 2002 the Committee asked the Executive for an explanation of the following matters:

(i) Section 41(3)(j) of the parent Act provides that regulations may include provision for appeals against determinations of the Tribunal. In the exercise of this power, regulation 9 provides for an appeal from a determination of the Tribunal to the convener of the Tribunal. However, it seems to the Committee likely that the convener will have taken part in any determination that is the subject of an appeal. Indeed, it seems possible, given the absence of any provisions in the regulations to deal with the procedures of the Tribunal, that the convener may have made the determination himself. The Committee doubts whether, in such circumstances, the Tribunal might be said to involve a "civil right" within the meaning of Article 6 ECHR. The Executive is asked to explain the compatibility of regulation 9 with Article 6 of the ECHR.

(ii) The Committee notes that there is no provision in the regulations as to what will happen as a result of an appeal. Regulation 10 permits the Tribunal on making a determination, to require the bus operator to pay compensation to the complainant. However, an appeal will not be decided by the Tribunal, but by the convener and compensation is in any event payable in terms of regulations only on a determination, not as the result of an appeal. The Committee requests an explanation of this matter.

(iii) The Executive is asked to clarify why regulation 9(2) provides for appeals to be made to the Tribunal when, under regulation 9(1), applications for appeals are to be made to (and decided by) the convener.

(iv) The Committee seeks clarification that the "complaint" referred to in regulation 11(1)(c) is a written complaint, within the terms of reference of the Tribunal.

(v) Although regulation 11 appears to consist of one paragraph only, paragraph number "(1)" has been inserted at the beginning of the regulation. Thus, the Executive is asked to confirm if any text has been omitted from regulation 11.

(vi) The Committee seeks an explanation from the Executive as to which complaints the words "total number of complaints received" in regulation 14(a) relate.

(vii) The Committee notes that regulation 14(b) obliges the Tribunal to make a report to the Scottish Ministers on "the number of relevant complaints". "Relevant complaints" are however defined in the Act as complaints made to the bus operators. The Committee requests an explanation as to how the Tribunal will be able to fulfil this obligation, in the absence of any requirement on the bus operators to supply the relevant data to the Tribunal.
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(viii) The Committee notes that regulation 14 does not provide for inclusion of the number of appeals within the report to be made by the Tribunal and asks if this is the intention.

(ix) The Executive is asked to explain the purpose of the words "from the date of coming into force of these Regulations" in regulation 3.

The Scottish Executive’s response is as follows:

The First Question
The Committee has pointed out that appeal provision in the regulations provides that any appeal from a determination of the Tribunal is to the convener of the Tribunal. The Committee has expressed concern that any appeal may therefore be before a person who was involved in the original decision-making process. However, by virtue of regulation 4 it is for the Tribunal to determine its own procedure and it will therefore be for the Tribunal to decide which if any original complaints the convener should hear. The Regulations do not require the convener to hear original complaints. In determining its procedure the Tribunal may therefore decide that the convener should act in an appellate capacity only. The Tribunal will be aware that any determinations they make have to be in accordance with the law and principles of natural justice. In any event, the Executive does not accept that the Tribunal will be involved in determining civil rights and obligations and therefore Article 6 will not apply. The appeal to the convener is considered to be sufficient in light of the actual remit of the Tribunal. The outcome of the Tribunal will not affect the complainant’s rights at common law.

The Second Question
The Committee has asked for an explanation of what happens as the result of an appeal. Regulation 9(3) enables the convener to issue a substitute determination. It is envisaged that any substitute determination can include provision as to compensation as though it were a determination made by the Tribunal. The Executive accepts however that the drafting could have made this clearer.

The Third Question
The Committee has asked why regulation 9(2) provides for appeals to be made to the Tribunal when, under regulation 9(1) applications for appeals are to be made to and decided by the convener. The Executive is grateful to the Committee for this observation. Any appeal will be heard by the convener and it may have been clearer if regulation 9(2) specified that the appeal is made to the convener. Nevertheless it is the Executive’s view that it is clear that an appeal may be made and that the appeal will be heard by the convener.

The Fourth Question
The Committee has asked for clarification that the "complaint" referred to in regulation 11(1)(c) is a written complaint, within the terms of the reference to the Tribunal. Section 41(1) of the Transport (Scotland) Act 2001 empowers the Tribunal to determine "written complaints". The reference in regulation 11 to "complaint" in the Executive’s view must therefore relate to "a written complaint".
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The Fifth Question
The Executive is grateful to the Committee for pointing out that a paragraph number "(1)" has been inserted at regulation 11. No further text has been omitted from regulation 11. The insertion of the paragraph "(1)" is a typographical error for which the Executive apologises.

The Sixth Question
The Committee has asked for an explanation as to which complaints the words "total number of complaints received" in regulation 14(a) relate. The Tribunal is empowered by section 41(1) to make determinations on written complaints in relation to "relevant complaints" which have been made. A relevant complaint is defined in section 41(7). It is possible that other complaints may be made to the Tribunal which do not fall within the definition of "relevant complaint". The Tribunal are not empowered to deal with these complaints but the purpose of regulation 14(a) is simply to record the total number of overall complaints including "relevant complaints" that are received by it.

The Seventh Question
The Committee has asked whether the Tribunal can fulfil its obligation under regulation 14(b) to provide the Scottish Ministers with a report containing details of "the number of relevant complaints". The Committee is correct that there is no requirement on the bus operators to supply relevant data in relation to the number of "relevant complaints" that it receives to the Tribunal. The purpose of regulation 14(b) is to provide details of the number of relevant complaints which are dealt with by the Tribunal rather than the total number of relevant complaints dealt with by the bus operator. The Executive accepts that the drafting of regulation 14(b) could have been clearer but believes that the Tribunal will be aware that the report to Scottish Ministers should contain details of the relevant complaints that they deal with.

The Eighth Question
As the Committee has pointed out regulation 14 does not specifically provide for inclusion of the number of appeals within the report to be made by the Tribunal to the Scottish Ministers. It is considered however that the information which has to be provided by virtue of regulation 14(e) namely the nature of any determinations made will identify whether the determination was originally made or was a substitute determination made by the convener under regulation 9(3).

The Ninth Question
The words "from the date of coming into force of these Regulations" in regulation 3 was inserted merely to clarify when the Tribunal would be effective from. While these words are strictly speaking unnecessary, they do not in any way prevent the regulations operating as intended.

CAROLINE LYON
Finance and Central Services Department
Office of the Solicitor to the Scottish Executive
7 March 2002
**Subject:** The Mobility and Access Committee for Scotland Regulations 2002, (SSI 2002/69)

**Meeting No:** 11th Meeting

**Date:** 27 March 2002

**Author:** Note by the Assistant Clerk

**Introduction and Background**

1. The Mobility and Access Committee for Scotland Regulations 2002, (SSI 2002/69) was laid on 26 February 2002. The regulations come into force on 22 March 2002. The Transport and the Environment Committee has been designated as the lead committee for the consideration of this instrument. An Executive note accompanies the order.

2. The order was laid under a "negative procedure" which means that the Parliament has the power to annul the order by resolution within 40 days, excluding recess. The time limit for Parliamentary action expires on 21 April 2002.

3. Any MSP may lodge a motion to propose to the lead committee that the order be annulled. The Committee is required to report on the instrument by 15 April 2002. Should a motion for annulment be lodged, under Rule 10.4, the Transport and the Environment Committee must debate the issue and then report to the Parliament with its decision.

**Purpose of the Instrument**

4. The purpose of this instrument is to establish the Mobility and Access Committee for Scotland, which will advise Scottish Ministers on the transport needs of disabled people and how to improve the accessibility of transport for them.

**Subordinate Legislation Committee**

5. The Subordinate Legislation Committee considered this instrument at its meeting on 5 March 2002. In its 14th report the Committee determined that the attention of the Parliament need not be drawn to the instrument.

**Recommendation**

6. The Committee is invited to agree its report on the instrument.

Alastair Macfie
Assistant Clerk
Transport and the Environment Committee
March 2002
TRANSPORT AND THE ENVIRONMENT COMMITTEE

AGENDA ITEM
TE/02/11/05

Subject: Petition PE470 – Petition by Mr Anthony Jackson on behalf of the Munlochy Vigil, on Genetically Modified Crops

Meeting No: 11th Meeting, 2002

Meeting Date: 27 March 2002

Author: Note by the Assistant Clerk

Introduction

1. This paper invites the Committee to consider for the first time Petition PE470 by Mr Anthony Jackson on behalf of the Munlochy Vigil, which calls for the Scottish Parliament to take the necessary steps to (a) immediately end GM Farm Scale Evaluations and (b) debate the future handling of the GM crops issue in Scotland. A copy of this petition is circulated with this covering note.

2. Representatives of the Munlochy Vigil gave evidence to the Public Petitions Committee (PPC) on 12 March 2002, and the relevant extract from the Official Report of that meeting is attached at Annex A of this covering note (Page 5). At the meeting, the petitioners outlined their concerns at the possible health risks and damage to the environment posed by the trials, and their concerns at the arrangements for monitoring the trials.

3. The extract from the PPC Official Report makes reference to a decision to be taken by the Minister for Environment and Rural Development on whether to approve GM trials at Newport-on-Tay. This decision has now been taken and a news release of 14 March 2002 from the Scottish Executive outlines the Executive’s reasons for approving the releases. This is attached to this covering note at Annex B (Page 17).

Progress of the Petition

4. The minute of the Public Petitions Committee meeting of 12 March 2002 records that the petition was referred to the Transport and the Environment Committee “with the recommendation that it should (a) urgently examine the issues raised in the context of the findings of its previous report on Genetically Modified Organisms, with particular emphasis on the ‘precautionary principle’ and List B procedures, and (b) seek the views of the Health and Community Care Committee on the issues raised. The Committee also agreed to copy the petition to both the First Minister and Minister for the Environment and Rural Development for information only”.

Transport and the Environment Committee Report on Petition PE51 by Friends of the Earth Scotland

5. The Transport and the Environment Committee has previously conducted an inquiry on the issue of genetically modified organisms, in response to Petition PE51 by Friends of the Earth Scotland.

6. Petition PE51 called on the Scottish Parliament to “exercise its powers not to permit the release of GM crops into the environment by way of trials or commercial planting”, and to “establish a mechanism in Scotland which will address the concerns regarding the impact of such releases on the environment and human health (by way of an inquiry, an independent Commission or Advisory Body)”.

7. The Committee held three evidence taking sessions as part of its GMOs inquiry, and published a report in January 2001. The text of this report is reprinted at Annex C of this covering note (Page 19).

Petitioners’ Requests

8. The two requests in Petition PE470 by the Munlochy Vigil are that the Scottish Parliament (a) immediately end the GM Farm Scale Evaluations and (b) debates the future handling of the GM crops issue in Scotland.

9. On the first point, the majority of the Committee were of the view in the Committee’s report of January 2001 that neither the Scottish Ministers nor the Scottish Parliament could impose a blanket ban on GM releases of the sort proposed by Friends of the Earth Scotland. On the second point, while the petitioners are correct in saying that there was a debate in the Parliament on GMOs in March 2000, this was not the most recent debate on this subject. The most recent debate in the Parliament on the Committee’s report in May 2001.

10. The petitioners suggest in their evidence to the PPC that there is scope for the Minister for Environment and Rural Development to stop GM trials if there is an environmental threat posed by the GM releases. The petitioners also suggest that there is a need for further Parliamentary debate on the issue of GMOs.

Options

11. There are various options open to the Committee for action on the petition. Among the possible options are—

Option A

12. To note the petition, informing the petitioners that the Committee has considered the issue of GM releases in its report published in January 2001.
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Option B

13. To write to Scottish Executive to seek further information on the process for approving individual GM trials in Scotland, and in particular how the possible impact of the GM releases on the environment and individuals’ health are taken into account in reaching a decision. The Executive could also be asked to comment on the arrangements for monitoring the GM releases once trials have commenced. Once the Committee has received this information, it would be open to the Committee to take any appropriate further action.

Option C

14. The Public Petitions Committee recommends that the Transport and the Environment Committee asks the Health and Community Care Committee to consider the petition. The Committee could pass the petition to the Health and Community Care Committee to allow it an opportunity to consider those elements of the petition which fell within its remit.

Option D

15. To appoint a Reporter to consider further the issues raised by the petition. Members should note that the Committee has already has Reporters appointed in connection with (a) opencast coal mining (b) aquaculture and (c) the Highlands and Islands ferry contracts. When the Committee considered its 2002 work programme, the Committee noted that it was not feasible to support any new Reporter work.

Option E

16. To conduct an inquiry, as requested by the Public Petition Committee, into the issues raised by Petition PE470, in the context of the findings of the Transport and the Environment Committee’s previous report on Genetically Modified Organisms, with particular emphasis on the ‘precautionary principle’ and List B procedures. However, members should note that the Committee has an agreed work programme, and its other commitments (including the 2003-04 Budget Process, the Committee’s aquaculture and rail inquiries, and the forthcoming Water Services and Water Environment Bill) would mean that such an inquiry would be difficult to begin before December.

Other Options

17. The Committee can of course take any other competent action it deems appropriate.

Recommendation

18. The Committee is asked to consider how it wishes to respond to the petition.
TRANSPORT AND THE ENVIRONMENT COMMITTEE

ANNEX A

EXTRACT FROM PUBLIC PETITIONS COMMITTEE OFFICIAL REPORT

12 March 2002

Genetically Modified Crops (PE470)

The Convener: Petition PE470, from Mr Anthony Jackson, is on the subject of farm-scale evaluations of genetically modified crops. It calls on the Parliament to take the necessary steps to end immediately the farm-scale evaluations of GM crops and to debate the future handling of GM crops in Scotland. As well as Mr Jackson, Linda Martin and Nigel Mullan are at the meeting. I think that Linda Martin will speak to the petition.

Linda Martin: Ninety-two per cent of the population of Munlochy opposes the GM trials because of the harm that the farm-scale evaluation could cause to health and the environment. When the experimental crop flowers, villagers have no option but to inhale the pollen, which makes them part of the experiment. There is also major opposition to the farm-scale evaluation programme in Aberdeenshire and Fife, where public anger is vocal and widespread. Concern and outrage motivated the Highland community to establish and maintain a vigil beside the crop. Overwintering beside the crop evidenced the level of public concern. The number of people who have signed the petition is 4,114, which is equivalent to the population of the Black Isle.

The issue is about science, democracy and economics. People live close to the crops and must suffer the untested effects on their health and livelihoods. Their actions as consumers, communities and businesses have demonstrated that they want neither farm-scale evaluations nor products made from GM ingredients.

Charles Saunders, chairman of the British Medical Association’s Scottish committee for public health medicine and community health, declared that the Scottish Executive is taking a gamble with our health. He stated of the trials:
"We simply don't have enough scientific evidence on their safety to be able to make a valid decision as to whether there are potential health effects or not."

No testing has been carried out on the health of the people of Munlochy, Daviot, Rothienorman or Newport-on-Tay. No baseline has been set, which leads to a complete lack of confidence in the trials. Until reliable and valid evidence provides evidence that the trials are safe, the Scottish Executive should invoke the precautionary principle and comply with European Union directives 90/220/EEC and 2001/18/EC.

The limitations of the trials and the concerns over their monitoring and overall conduct call into question their validity and reliability. One example is the use of different varieties and ever-changing sowing rates. The rate is currently 250 seeds per square metre; it was originally 120 per square metre. That compares with 60 seeds per square metre for a good commercial crop. Those figures question strongly the validity of the science, as do the differing growth habits and weed numbers in the trial and control crops at Munlochy. The trial crop’s genetic stability and its resistance to glufosinate ammonium have been questioned, as has the associated run-off into the village and the Munlochy bay environmentally sensitive area. In connection with the trials, GA is licensed only for winter use, and a court case is pending over that consent.
According to the science editor of *The Sunday Times*, the preliminary results show that the trials are damaging the environment. In an answer to a written question, the Executive stated that it understands that no interim results yet exist. If there is such evidence, it should be in the public domain, as stipulated in article 8 of the relevant EU directive, and it should be acted on, in accordance with article 4. Mr Finnie has repeatedly said that, if there was evidence of a threat or risk to the environment, he would stop the trials.

Supermarkets do not use GM produce in their own-brand goods, 79 per cent of Europeans do not want it and there are serious international concerns over the adequacy of the safety-testing procedures for GM foods. The demand for genetically modified produce has collapsed, so why are we risking people’s health and the environment for a product without commercial prospects?

Scotland has an opportunity to listen to the public and to reinforce its environmental assets. It must seize that opportunity and act now, rather than dealing with the aftermath, as was the case with BSE and foot-and-mouth disease. GM produce will not restore public confidence in the food chain or in the farming industry. The trials must be stopped immediately. Parliament must have a full debate—with a free vote in order to reflect cross-party support and political concern—to give the issue a democratic hearing.

The Convener: Before I invite Robin Harper and Tricia Marwick to speak, I inform members that we have received a large number of letters in support of the petition. Many of the letters are from local residents—those are the ones in the box that is before us. There are also letters from local MPs, MSPs—Rhoda Grant and Maureen Macmillan—Highland Council representatives, five local businesses and a range of environmental organisations. All that material is available to committee members who wish to see it.

Robin Harper: I am a signatory to the petition as well as a long-time supporter of the cause. What comes to mind immediately is the latest news from Canada that genetically modified oil-seed rape is now cross-pollinating with related brassicas in the wild. That is a matter of great concern to me. Do our witnesses agree that that suggests that what was originally mooted as a possibility is now a fact and that the crop should not be allowed to flower?

Anthony Jackson: Absolutely. The—

The Convener: I am sorry to interrupt, but, technically, Robin Harper is meant simply to make a statement in support of the petition. However, please continue—you may answer the question.

Anthony Jackson: The problem lies in something called gene stacking. Oil-seed rape has been genetically modified to be used with a particular herbicide, which is produced by the same company that produces the seed. That company therefore has a monopoly. If commercialisation happened in Scotland, Aventis would grow only some crops and Monsanto would grow others. There would be tolerance to two herbicides. Therefore, once the crop cross-pollinated with wild brassicas, the only way in which volunteers in the field could control it over a period of years would be by using such herbicides as Paraquat and 2,4-D, which is derived from Agent Orange. That is the level to which we will go.

Tricia Marwick: I am here to support the petition. I apologise on behalf of my colleagues Fergus Ewing and Bruce Crawford, who have to attend other committee meetings this morning. I know that they would want to be here.
I support the petition’s call for a debate in the Parliament, but my main concern is the situation in Newport-on-Tay. Trials are proposed there for the next few weeks, if the Minister for Environment and Rural Development gives the go-ahead. There were two public meetings in Newport-on-Tay last week, one of which was organised by the Executive and the other by the community. I spoke at the second meeting—I have rarely seen such anger from a community as I saw on Friday night in Newport, where a steering group has been set up.

What makes people so angry is the fact that the communities have to prove that there is a risk, whereas the seed manufacturers do not have to prove the product’s safety. The minister has made it clear that, unless risk is proved, trials will go ahead. I reiterate the fact that there is no onus on the seed manufacturers to prove that the product is safe before the trials are carried out. That places communities in an appalling situation.

I hope that the Public Petitions Committee will support the petitioners’ call. We must adopt the precautionary principle that the trials should be halted until the seed manufacturers and the Executive can convince people in the areas where the trials are to take place and, more important, people throughout Scotland that there is no risk to their health and the health of their children or to the health of future generations.

John Farquhar Munro (Ross, Skye and Inverness West) (LD): Good morning. The advice that was given when the issue was first debated in the Scottish Parliament was that, because of a European Union directive, the Executive had no locus to do anything other than to approve the GM crop trials. Since then, I have received information that the type of trial that we are discussing is of little concern to our friends in Europe and that the responsibility for approving or rejecting such a trial is vested in the Scottish Executive. Will you give us information on that?

Anthony Jackson: Absolutely. There are two kinds of consent for trials. Part B consent is for experimental releases and part C consent is for commercialisation. The oil-seed rape in question does not have part C consent, so it cannot enter the food chain. However, birds such as pheasants are wandering over the crop and have been doing so since the seeds were sown. Part B consents are entirely in the hands of the Scottish Executive.

The Executive is classed as the competent authority, so it can do what it likes—it could halt the trials tomorrow.

John Farquhar Munro: I am sure that, as a group, you have made that information known to the Executive and others. What sort of response have you had?

Anthony Jackson: Mr Finnie’s response is that, unless he has evidence of a threat to the environment or to human health, he can do nothing. However, evidence of environmental damage can be found. The Sunday Times article declared that the preliminary results for the first two years of the trials showed that that was the case. I ask the committee to try to get hold of that information and to put it in the public domain. If the evidence exists, Mr Finnie must act—that is a legal requirement. Linda Martin spoke about health. Charles Saunders, the chairman of the BMA's Scottish committee for public health, said that there is no health testing, so how can anyone prove that there is a risk? The situation is outrageous.

Nigel Mullan: I reinforce that point. Members might have seen the Sunday Herald article by Rob Edwards, in which he made the commercial complaint that no insurance companies are willing to assist any liability schemes for farmers who are conducting the trials. An organic farmer who is five miles away from a trial site suffers a real risk of contamination and hence
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of losing Soil Association accreditation. There is no insurance to help such farmers if their businesses go down the tubes. The fact that commercial companies have picked up those signals is a sure-fire indication that concern is not just coming from environmentalists or loonies, but is reflected in hard banking terms.

Syngenta, a large biotechnology company that has been heavily involved in genetic engineering and has a large genetic engineering capacity, has not been involved in any European trials. It is trying to push something through in the south of India, but that is another story. It is moving away from involvement in GM food or seed. It is going for zero tolerance on contamination. Syngenta is a big producer of oil-seed rape. Five years ago, it had about 1 per cent of the market share of oil-seed rape; this year, it will have about 50 per cent of the market share. It produces non-GM oil-seed rape using a new technique—marker-assisted breeding—that does not involve interference with the genome. Even if we leave aside the insurance angle, that is an instance of a significant biotech company backing down from field-scale evaluations and the commercialisation of GM food and seed.

John Farquhar Munro: I read the article with a great deal of interest. In the past, it was generally known that it was not possible to insure against contamination of or damage to crops or the environment. You make the point that that could be detrimental to organisations that are peripheral to the crop trial. It also has a significant effect on the trial site—on the owner or the promoter of the scheme. I am sure that any claims against them would not be insurable either. That fact is well established, although it is now in the public domain and available to everybody.

Rhoda Grant: I am concerned that there was a lack of consultation on the scheme before the crop was planted. The local community got together and held meetings, but those had little or no effect. I understand that the EU directive that was in place at the time—which, according to the Scottish Executive, did not allow it to prevent the trials—was being amended to enable consultation to take place and to ensure that the consultation was meaningful. Do you know whether that has made any difference to the current set-up?

Linda Martin: The new directive does not come into force until October. At the moment, we have a crop on top of a hill; that crop will flower. There are serious concerns about that. An entire village is terrified about what will happen when the crop flowers.

I take the committee back to what John Farquhar Munro said about the Executive. Under the precautionary principle, the Executive has a duty to act. If I provide members with a definition of the precautionary principle, they will be able to see why it is easy for the Executive to pull the trial. The definition states: "Where an activity raises threats of harm to human health or the environment, precautionary measures should be invoked even if some cause and effect relationships are not established in scientific fact".

We do not even need scientific fact to pull the trial. However, as Robin Harper said, we have scientific fact. Why are crop trials going ahead anywhere when we know that they are damaging the environment? The herbicide that is being used causes reproduction problems in rats and problems with the nervous system in humans. We know that that herbicide is coming down the hill towards us. How would members feel in that situation?

Helen Eadie: During the previous round of debates on the issue, we received advice that the Scottish Parliament was unable to impose a blanket ban on the GM crops. Given that there is now new evidence, do you think that we should redirect the petition to the European Parliament Petitions Committee? If GM is an issue in Scotland, it must be an issue
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throughout Europe. Given that the directive was issued by the European Union, it may be appropriate for us to send the information that Robin Harper provides in his letter to the European Parliament Petitions Committee.

Linda Martin: Would that halt the FSEs now, or would we have to wait for the European Parliament Petitions Committee to deal with our petition before that happened?

Helen Eadie: You could ask for a moratorium on current trials to be introduced, on the basis of the information that you have supplied.

Anthony Jackson: A moratorium in Europe?

Helen Eadie: A moratorium in Scotland.

Anthony Jackson: The farm-scale evaluations are an entirely Scottish issue. The Scottish Executive is the competent authority for dealing with part B consents.

Helen Eadie: When Ross Finnie spoke in the debate in the Scottish Parliament, he said that he was acting on the legal advice from Europe that the Scottish Executive had at that time. As a European member state, we were bound by that legal advice.

Anthony Jackson: A blanket ban on growing GM crops is different. A part C consent is a commercial licence under European legislation. There is no commercial licence for the oil-seed rape that is grown in Scotland at the moment; there are only part B consents, which are in the hands of the Scottish Executive. The Scottish Parliament information centre literature states that the Scottish Executive is the competent authority for part B consents.

Helen Eadie: I will leave the thought with you.

Dorothy-Grace Elder: Are you aware of the carelessness that has occurred every so often in relation to GM crops? I dare say that you are better informed than almost anyone in the country. Do you recall that Mr Finnie admitted in May 2000 that seeds had been planted illegally and that fields had to be pulled up? There had been almost a month's delay in Westminster's letting the Scottish Executive know that it had heard from Advanta Seeds in Canada that rogue seeds had got through. Mr Finnie did not admit that at the time but the answer that I received to a question a week later stated that an illegal harvest had taken place in 1999, the products of which were in the food chain. Apart from having the terrible site on your doorstep, which you do not want, do you have any indicators of carelessness in the handling of the project?

Anthony Jackson: Indeed. An authority, if I can use that word, called SCIMAC—the supply chain initiative on modified agricultural crops—designates the guidelines for the planting of the crops. Given that SCIMAC is a biotechnology industry body, the industry decides the guidelines for the planting of the crop.

The farmer—farmer Grant—has broken the guidelines on numerous occasions, not least when he planted winter wheat within three days of harvesting last year's oil-seed rape trial. There is supposed to be a three-week gap so that any seeds that are shed in harvesting can regenerate themselves and be ploughed back in. That way there are fewer so-called volunteers—the oil-seed rape coming back through. Volunteers are coming through because Mr Grant left only three days between harvesting the trial crop and planting winter wheat. It is all very well to say that the fields have been sprayed, but we noticed the volunteers and pointed them out to the Scottish Agricultural Science Agency, which is supposed to be the
regulatory authority. SCIMAC's response was that things were different in Scotland. If that is the case, why was Mr Grant still planting cereal crops in October and why are the consents not different in Scotland? The system is shambolic.

**Phil Gallie:** I refer back to Helen Eadie's point that the Scottish Executive cannot impose a blanket ban. That suggests to me that it can impose a ban where circumstances are such that it is reasonable to do so.

My concern with GM trials is the irreversibility of their results. Containment must be the basis on which any trial should go ahead, although I acknowledge how difficult that is.

We seem to have taken a general approach to petition PE470. I know that that is the Public Petitions Committee's usual approach. However, given that the Government cannot deal with the matter in general terms and impose a blanket ban, do you agree that the petition should concentrate on the Munlochy scheme? If it did, the committee could make a judgment on a response from the Scottish Executive based on that scheme only.

**Linda Martin:** The problem does not apply only to Munlochy. Every mother has a child. I do not want a GM trial site next to my village, but I do not want it next to anybody else's village either. We have severe problems with the site. When the oil-seed rape flowers, we are worried about what it will do to people's health. We know that there are problems with herbicides as well.

If the trial is not good for Munlochy, why would a trial be good for Newport and Aberdeen? The site at Munlochy is close to a population centre—it is less than a mile away. It is also in the middle of three sites of special scientific interest. However, that is not to say that there are not similar problems in Newport or Aberdeen.

The science is untried and untested. The risk assessment has not been correctly done. There is no testing on human health. None of the local doctors has been involved. We have no baseline study. We do not even know the effects that GM foods are having on Americans, because no testing has been done in America, either.

Because no baseline study has been done, if there was a huge incident in five years' time, we could not even track it back to GM. There is no risk assessment, but—let us be perfectly honest—risk should be assessed as new evidence comes in. To say that a risk assessment was done two years ago—or whenever it was that Ross Finnie first looked at the issue—is not good enough. Information comes in daily. In the past fortnight alone, three or four scientists have said in the press, "We don't want this. We don't want it because it is not science." That is the problem that I have. How do I know the effects that GM crops will have on people's health?

I admit that Munlochy is where I come from and that I cherish it, but I care about other human beings as well, and I do not see why Newport or Aberdeen or anywhere else should have to put up with a trial. If it is not good enough for me and I do not want it, why should somebody else get it?

**Phil Gallie:** I accept all those arguments and I understand the way in which you are looking at the issue. However, you have rejected Helen Eadie's idea of taking the matter to Europe, where a wider range of issues would be considered. I have been looking at letters, which even I—and I live far from the area—have received about Munlochy. The letters say that the specific geographic conditions in the area are certainly not suitable for the GM trials that are going on.
You cannot win the battle overnight. We are told by Ross Finnie that he cannot impose a blanket ban but that he can impose a local ban. If you nip away at the issue, site by site, you may achieve your aims. That is what I suggest.

**Nigel Mullan:** If you read what Ross Finnie said during the parliamentary debate when he was pushed on whether he could impose a ban, you will see that he havered slightly. He did not want to be pushed into a legal situation. It is worth while having a look at that debate. When the Transport and the Environment Committee discussed pulling trials under part B consents, it, too, was of the mind that the matter was properly one for the courts. What was so encouraging about the debate in the Scottish Parliament and the subsequent discussions in the Transport and the Environment Committee was the level of genuine concern. There was almost a feeling that, if there had been a little more political will, the trials could have been pulled.

I support what Linda Martin said about health tests, which are very important. We can do environmental tests and all that kind of thing, but tests for human health are very important. The Transport and the Environment Committee recommended that far more research should be done. I urge this committee to consider that.

**Helen Eadie:** It is grossly unfair to say that Ross Finnie havered in any way. He was abundantly clear about where he stood and he was abundantly clear that, because of an EU directive, he did not have the power to impose a blanket ban. However, that does not mean that people around this table will be unsympathetic to the petitioners' views if there is new evidence. If you have a door that you need to unlock to solve a particular problem, you need to knock on the appropriate door. If what you are saying is accurate and correct, and can be scientifically proven, a challenge must be made—and not just here in Scotland. Pollen knows no boundaries. If a problem arises in Scotland, it will also be a problem in England and other countries. You will have to find the right door and knock on it, so it is grossly unfair to attack the minister.

**Nigel Mullan:** I was not attacking the minister; I was saying that the discussions in the Parliament, across the parties, have been encouraging and that we would like to encourage more discussions now.

**The Convener:** We have all been guilty of haverering at one time or another.

**Tricia Marwick:** Heaven forfend that any of us should haver, John. I certainly do not—not often, anyway. Helen Eadie is right to say that the problem goes wider than Scotland, but the petitioners are right to say that the problem has to be resolved in Scotland. We have a Scottish Parliament and Ross Finnie is the minister responsible for the trials. He was responsible for agreeing to the trials that are taking place in Munlochy and he will be responsible for the decision on whether trials will go ahead in Newport.

Although Helen Eadie's suggestion about going to the European Parliament Petitions Committee is a good idea, it does not affect the immediate problems that need to be resolved in Scotland. I see heads nodding, so I will not put that as a question, because I think that the petitioners agree with me.

Linda, you quoted Dr Charles Saunders, who said that the Executive is gambling with our health. Dr Saunders is not only a member of the BMA; he is a public health officer in Fife, where the Newport trials are destined to start within the next few weeks. When you spoke about the precautionary principle, you read out a quotation saying that the minister has to
believe only that there might be some risk and that that would be sufficient to halt the trials. Do you think that the fact that someone from public health in Fife, where the next trials are to be held, is talking about gambling with public health is sufficient reason for the Executive to stop the trials?

**Linda Martin:** Yes.

**The Convener:** Would a ban on the farm-scale evaluations at Munlochy and in Aberdeenshire and Fife constitute a blanket ban as referred to by the Executive?

**Anthony Jackson:** No. The issue of a blanket ban comes back to the part B and part C consents. We are not talking about commercialisation. The trials are an experimental release and, as far as we are aware and as far as the parliamentary documentation makes out, the Scottish Executive is the competent authority for part B releases. We are not talking about a blanket ban on commercial crops. Once a crop has a commercial licence in Europe, it can be grown anywhere by any farmer in Europe. That is a separate issue.

**The Convener:** When the Transport and the Environment Committee published the findings of its inquiry, did it address the issue of a possible ban on the three sites?

**Anthony Jackson:** The Transport and the Environment Committee discussed all GM organism releases. That would involve part B and part C releases. We are talking about part B releases.

**The Convener:** The Transport and the Environment Committee did not address exclusively the issue of part B consents.

**Anthony Jackson:** No.

**The Convener:** Since that committee published its report in January 2001, all kinds of new information have emerged.

**Anthony Jackson:** Absolutely, as well as public outrage and protest. The trials started in January 2001 and we have seen what a shambles they are and what people think of them. There has also been plenty of new research.

**Dorothy-Grace Elder:** We should note the date that the convener mentioned—January 2001. We had first notification of foot-and-mouth disease in February 2001. I am not defending the minister in any way, because I have urged him to use the precautionary principle in other matters. However, I suggest that, from the moment that foot-and-mouth disease was announced, the minister became totally absorbed in that crisis, which is only now receding. Unfortunately, the plantings took place during that period. The issue of GM crops has definitely taken a back seat because of all our other appalling agricultural problems. It is now time to get back into the fray—I do not need to tell you that. Ministers should be getting back into the fray.

I urge you to accept the advice to go to the EU. The process is extremely easy. You can submit an electronic petition and one of you can go over to the European Parliament—the trip will be paid for if the petition is accepted.

The minister certainly has powers under the precautionary principle. Phil Gallie raised an important point and I note that you are being extremely noble, proper and correct in not wanting other areas of Scotland to be infected. However, environmental matters are
sometimes a bit like guerrilla warfare. If you deal with the issue in your area, that will help people in the next area—such as Tricia Marwick's area—and you can keep up a running battle to drive the GM experiment right out of Scotland. I do not see what anyone is getting out of it, especially the minister. He would be enormously popular if he declared against the GM experiment and stopped the trials. No one can understand, except perhaps, we suspect, certain supermarket chains.

Linda Martin: Multinationals.

Dorothy-Grace Elder: Quite.

Robin Harper: It is important to remember that the Transport and the Environment Committee report was, in some respects, a majority report. Three members of the committee seriously disagreed with some of the report's findings, particularly the failure to recommend a ban on farm-scale evaluations. The three members who disagreed with that point felt that we had not heard any evidence to support the continuation of the trials and that we had heard enough evidence to convince us that our initial conviction that such trials should be stopped was correct.

I agree that the issue should go to Europe. The subject is being discussed and has already been discussed in the European Parliament, which is in continuous dialogue with the Commission on revising the rules on GM research and planting. It would not do any harm, although it would be a diversion, to consider sending the petition to Europe as the result of today's meeting. We are discussing part B consent. It is perfectly clear that the Parliament should consider on the narrow basis of part B consents whether the minister should reconsider his original decision. I strongly recommend that the petition be sent to an appropriate committee to look again at the position.

The Convener: It is obvious from the last two sets of comments that the committee has run out of questions. However, I have one final question. The suggested action before the committee is that we pass the petition to the Transport and the Environment Committee because it has already produced a report on the issue. Would the petitioners support that action?

Anthony Jackson: Yes. However, as Charles Saunders has spoken out about the uncertainty of the health effects, would it be possible for the Health and Community Care Committee to speak to some health experts about the lack of health monitoring? That issue is vital.

The Convener: We shall discuss the recommendation.

Robin Harper: In a sense, the petition also raises local government and human rights issues because it calls into question the whole function and purpose of local consultations. So far, only one view has been expressed during the local consultations and that view has been completely ignored.

The Convener: Are such consultations carried out under the auspices of local authorities?

Tricia Marwick: No. The event in Newport was organised by the Scottish Executive. It was not a consultation evening, but an information-giving evening. That is the extent of the consultation that communities have been offered—not consultation, but information giving.
The Convener: Robin Harper seemed to be suggesting that the petition should go to the Local Government Committee.

Robin Harper: No, I was thinking of one of the justice committees.

Linda Martin: What happens to FSEs in the meantime? Do we have to sit there, watching the thing growing and breathing it in? Is that okay with the Scottish Parliament? Is that what we are being told?

The Convener: That is a matter for the Scottish Executive. If the Scottish Executive can maintain its support in the Parliament, it can certainly say that there is nothing that it can do about FSEs. However, the Executive must maintain support in the Parliament. That is why the petition should go to the appropriate committee—the Transport and the Environment Committee—to address the issue of what happens to farm-scale evaluations in the meantime and what action the Parliament can take in relation to what the Executive intends. If the questions to the petitioners are finished, we can move on to discuss what we should do with the petition. The suggestion is that we refer it to the Transport and the Environment Committee with the recommendation that it addresses the new issues that the petition raises.

Dorothy-Grace Elder: I was going to suggest that this might be the right time to send a copy of the petition to the First Minister, given his recent speech on environmental justice—that is a good phrase. He may wish to collect examples of environmental injustice, where a local community has had something to which it is totally and utterly opposed forced on it. I see no harm in sending him a copy of the petition. It is unusual for us to refer a petition to the First Minister but, in view of his speech and commitment, it might be helpful to do so in this case.

The Convener: We can copy the petition to the First Minister for his information when we pass it to the Transport and the Environment Committee.

Phil Gallie: I apologise for returning to the issue of Munlochy. I wonder what the minister considers before he authorises trials of genetically modified crops. I would like the committee to write to Ross Finnie, asking him what consideration is given to protection for communities and risk. We should also ask what liaison he has with those who are responsible for health matters. If we get information from the minister, it will help to clarify matters in the many future arguments that we will have on these issues.

The Convener: The problem is that the Transport and the Environment Committee will be dealing with the petition, so it is for that committee to do what you suggest. We can recommend that the Transport and the Environment Committee look into the part B consent procedures and in particular at the assessments that ministers make of the risk of damage to health and the environment. However, the petition is the Transport and the Environment Committee's property once it leaves this committee. The Transport and the Environment Committee has already carried out an inquiry into the issue and it is better versed than we are in the ins and outs of the subject. We should draw those points to the attention of the Transport and the Environment Committee and say that they are the recommendations of this committee.

Phil Gallie: I acknowledge what you are saying, convener, and it is probably correct in the context of the niceties of the Parliament, but the people in Munlochy feel a sense of great urgency. We all know what happens when petitions are passed on to other committees; they tend to go on the back burner, for good reasons in many instances. We have spent a lot of
time this morning—the best part of three quarters of an hour—on PE470. It is only right and courteous to the people to whom we have listened that this should be one occasion on which we stretch out a little. I do not see that we will do any harm to anyone by writing to Ross Finnie.

**The Convener:** If we write to Ross Finnie, that will delay the petition's referral to the Transport and the Environment Committee and it will delay any action being taken—it will further delay the process.

**Phil Gallie:** We could do both.

**The Convener:** We cannot—once the petition goes to the Transport and the Environment Committee, under the Parliament's rules, it is no longer our property and we can no longer act on it, because it has been formally passed to the Transport and the Environment Committee for action. We can draw that committee's attention to the need for urgency and ask it to address the issue as a matter of urgency because of what the petitioners have said this morning, but it is for the policy committee, not us, to address the issue.

**Robin Harper:** I realise that it is not normal practice to refer a petition directly to a minister, but I do not see that it would slow down the process.

**The Convener:** We can refer the petition and even a copy of the *Official Report* to the First Minister and to Ross Finnie, the Minister for Environment and Rural Development, for their information, but the action on the petition is now for the Transport and the Environment Committee to take.

**Robin Harper:** I understand that, but I agree strongly with what Phil Gallie said—I ought to have said it first. Given the urgency of the issue, the petition should go to Ross Finnie in the hope that he might do something.

**Helen Eadie:** In support of the convener and in answer to Robin Harper's point, I should add that it is not at all unusual to refer matters to the Scottish Executive, but the practice is that we always wait for a reply before we decide what to do. If the decision is to send the petition to a committee, that is what we do. That is what the convener is saying. He is correct.

**Phil Gallie:** Could we have a compromise, convener? Could we write to the Transport and the Environment Committee and say that with many apologies we have taken the matter into our own hands by making inquiries of the minister? I am sure that that would satisfy the niceties of Parliament.

**The Convener:** I am advised that we must do one or the other. We cannot do both.

**Phil Gallie:** The clerk is a hard man.

**Rhoda Grant:** I suggest that we send the petition to the Transport and the Environment Committee and mark it as urgent. We should draw attention to the petitioners' point that the crop is about to flower and to their other concerns and we should ask that committee to consider whether the precautionary principle can be exercised.

Underlining the urgency of the issue and including a copy of the *Official Report* of our meeting might be the fastest way of dealing with the petition.
The Convener: We can also recommend that the Transport and the Environment Committee consider referring the petition to the Health and Community Care Committee, because of the health implications.

Phil Gallie: If that is what people want to do, I will not cause division. It would be in order for every MSP who has a constituency interest to write to the minister to ask for the information that we have discussed. That might be a way ahead for those who have a specific interest.

The Convener: It is also in order for every committee member to so write, as an individual MSP.

Is the proposed action agreed?

Members indicated agreement.
ANNEX B

SCOTTISH EXECUTIVE NEWS RELEASE – 14 March 2002

Executive approves three GM sites

The Executive has today given its approval for the release of a GM oilseed rape crop this spring in three fields.

In answer to a Parliamentary Question from Iain Smith MSP, Minister for the Environment and Rural Development Ross Finnie said:

"I am able to announce today that the Executive has approved the release of a GM oilseed rape crop at a further three sites in Scotland this spring. Releases of this crop have only been permitted because of the explicit advice of our expert advisory bodies that the crop can be grown on these sites in safety; both for the people living near the trial sites and for the wider environment. If there was any evidence to suggest that the crop posed a threat to human health or the environment, I would not be prepared to permit the releases on these sites.

"The three sites (two in Aberdeenshire and one in Fife) will join 12 other Scottish sites which have grown GM oilseed rape as part of the farm scale evaluation programme, although the crop has been grown for research purposes in the UK for a decade. This is the third and final year of plantings under the evaluation programme, after which the results will be evaluated and will help inform decisions on whether these crops have a commercial future in this country. The agreement which the Executive has with the industry to permit these trials to take place means that there will be no commercial growing of GM in this country at least until the trials are completed."

The legislation under which applications for the release of GM crops are considered requires that decisions are taken on the basis of scientific criteria. The legislation allows for objections to a particular application to carry weight if those objections have a clearly established scientific basis. While Ministers are alert to the concerns voiced by those who believe that farm scale evaluations present a threat to them or their environment, Ministers act upon the advice of experts who, on the basis of their professional knowledge, have advised that no such threat exists. The Executive has endeavoured to ensure that factual information is widely available in the vicinity of proposed sites. Mr Finnie led a public information meeting in North-east Fife on March 4 to answer questions raised by people in the area of one of the proposed sites.

Although the statutory period during which Ministers can withhold approval for an application to proceed is only 15 days, the Executive has insisted upon a lengthier period on this occasion to allow information to be shared with local interests. Ministers still have powers to call a halt to the planting at any time if any evidence emerges to suggest that these crops pose a safety threat. Ministers will have no hesitation in using these powers if that evidence exists.
The approved sites are at the following locations:

**Grid Reference/Nearest Village**
NJ746301 Daviot
NJ772280 Daviot
NO432250 Newport-on-Tay
INTRODUCTION

1. The Transport and the Environment Committee agreed on 28 June 2000 to hold an inquiry into genetically modified organisms (GMOs), in the context of the Committee’s consideration of Petition PE51 from Friends of the Earth Scotland.

2. Petition PE51 was submitted to the Parliament in December 1999 and was subsequently referred to the Transport and the Environment Committee by the Public Petitions Committee.

3. The petition calls on the Scottish Parliament to “exercise its powers not to permit the release of GM crops into the environment by way of trials or commercial planting”, and to “establish a mechanism in Scotland which will address the concerns regarding the impact of such releases on the environment and human health (by way of an inquiry, an independent Commission or Advisory Body)”\(^1\).

4. The petition was considered by the Rural Affairs Committee on 23 May 2000, and on 4 July 2000 the Rural Affairs Committee took evidence from Ross Finnie MSP, Minister for Rural Affairs. The Rural Affairs Committee took the view that Parliament has no ability under EC regulations to prohibit the release of Genetically Modified Crops into the environment, by way of trials or commercial planting. In addition, the Committee proposed that the Transport and the Environment Committee undertook further examination of the mechanisms by which advisory committees interact with each other, the public and the Parliament.

5. The Health and Community Care Committee considered the petition on 13 March 2000. The Committee had no comments on the petition, but supported calls for a debate in the Chamber on the issue of GMOs. A Chamber debate on genetic modification science subsequently took place on 23 March 2000.

Scope of the Committee’s report

1 Scottish Parliament Petition PE51 by Friends of the Earth Scotland
6. In considering the petition, the Transport and the Environment Committee acknowledges that issues concerning the development and release of GMOs are substantial and complex.

7. The Committees’ inquiry was undertaken as part of its consideration of Petition 51 from Friends of the Earth (FoE). Its evidence taking was therefore focused in its approach, and sought to address the specific requests made by the petitioner, and, in particular, the adequacy of the current GM advisory framework. The scope of the Committee’s inquiry was also defined by its remit and as a consequence the Committee’s inquiry was concerned with the environmental implications of GMOs.

8. The Committee acknowledges that there are many other important issues relating to GMOs, which were not pursued in its inquiry.

9. The Committee wishes to acknowledge the concerns expressed in current public debate about the possible risks associated with GMOs. The Committee considers that it is not surprising that such concerns have arisen given the novel nature of developments in GM technology. The Committee considers that a careful balance needs to be struck between the on-going development of GM technology and minimising any potential associated risks.

Evidence Taken by the Committee

10. The Committee took both oral and written evidence on the issues raised by the FoE petition. On 6 September 2000 (20th meeting, 2000), the Committee took evidence from the Scottish Crop Research Institute (SCRI). On 20 September 2000 (21st meeting), the Committee took evidence from Friends of the Earth Scotland (FoE), Royal Society for the Protection of Birds Scotland (RSPB), and Dr Ulrich Loening, retired director of the Centre for Human Ecology. Finally, on 27 September 2000 (22nd meeting), the Committee took evidence from the Advisory Committee on Releases into the Environment (ACRE), the Agriculture and Environment Biotechnology Commission (AEBC), and Sarah Boyack MSP, Minister for Transport and the Environment.

11. While both Bruce Crawford MSP and Fiona McLeod MSP have contributed to consideration of the content of this report, neither were members of the Committee when evidence on the petition was taken. It should also be noted that membership of the Committee changed in the period between formal agreement of the report and its publication. The Committee members listed at the beginning of this report are those who were members of the Committee when evidence was taken and at the time the report was agreed. It does not reflect the recent changes to Committee membership which took place on 8 January.

12. The Committee is grateful to the individuals and organisations who provided oral and written evidence to the Committee. The recommendations contained in this report are made on the basis of this evidence.
BACKGROUND

**Current Advisory Framework on GMOs**

13. The release of GMOs in Scotland and the UK is governed by European Council Directive 90/220/EEC. It requires that “due attention be given to controlling risks from the deliberate release of GMOs into the environment”. It also establishes the principle that “a case-by-case environmental risk assessment should always be carried out prior to a release”².

14. In the UK, this Directive is implemented by Part IV of the Environmental Protection Act 1990 and Regulations made under the Act. Section 124(1) of the Act requires that a Committee be established in order to advise Ministers on the release of GMOs. The Advisory Committee on Releases into the Environment (ACRE) was established to fulfil this role. It advises Ministers in both the UK government and the devolved administrations.

15. ACRE conducts the case-by-case environmental assessments of GM releases required under Directive 90/220/EEC. Its remit does not encompass strategic, ethical or public acceptance issues relating to GMOs.

16. ACRE is one of fourteen specialist scientific committees within the UK government’s advisory framework on GM technology. Other specialist committees include, for example, the Advisory Committee on Pesticides (ACP) and the Advisory Committee on Novel Foods and Processes (ACNFP). As well as these specialist bodies, three strategic bodies have been established to consider the broader implications of GM technology – the Food Standards Agency (FSA), the Human Genetics Commission (HGC), and the Agriculture and Environment Biotechnology Commission (AEBC).

**The AEBC**

17. The AEBC was established on 5 June 2000. Along with the two other strategic GM advisory bodies, its establishment was partly a response to a review of existing GM advisory bodies which concluded that their remits were too narrow. The review recommended that the AEBC be established to advise government on the wider implications of the use of GM technology.

18. The terms of reference of the AEBC state that it will, among other things, “offer strategic advice to Government on biotechnology issues which impact on agriculture and the environment;... keep under review current and possible future developments in biotechnology with actual or potential implications for agriculture and the environment; [and] advise Government on the ethical and social implications arising from these developments and their public acceptability”³.

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³ Submission from AEBC, September 2000
19. The Committee took evidence on whether the Scottish Parliament has “powers not to permit the release of GM crops into the environment by way of trials or commercial planting” as is suggested in the FoE petition.

Legality of a Blanket Ban on GM releases
20. Legal advice received by the Committee from the Parliamentary Solicitor suggests that neither the Parliament nor the Scottish Ministers have the power to impose a blanket ban on the release of GM crops of the kind proposed in the FoE petition. This advice stems from the provisions of European Council Directive 90/220/EEC which requires that member states should not unnecessarily restrict the release of GM crops if the release was safe for human health and the environment.

21. This advice coincides with the position of the Scottish Executive. Giving evidence to the Committee the then Minister for Transport and the Environment, Sarah Boyack MSP said, “we are required to operate within the governing European and domestic law, and under existing provisions a moratorium, or refusal to grant consent, would be illegal unless based on sound scientific evidence of harm” (col 998).

22. However, in evidence to the Committee, FoE presented a different possible interpretation of the Directive, which suggested that the Scottish Executive had more scope for action to restrict the release of GMOs.

23. In particular, FoE point to Article 4 of the Directive which states that “Member States shall ensure that all appropriate measures are taken to avoid adverse effects on human health and the environment which might arise from the deliberate release or placing on the market of GMOs”. In oral evidence, FoE stated that “we are not satisfied that “all appropriate measures”—which is what EC directive 90/220/EEC requires—rather than some, or the most reasonable, measures have been taken to avoid risk” (col 936). FoE cited, for example, the potential damage to the commercial value and reputation of beekeepers whose honey was made from contaminated pollen, as falling within the scope of the precautionary principle and the Directive.

24. The Committee accepts that the EC Directive is open to differing interpretations. However it is not for the Committee to attempt to give a definitive interpretation of existing legislation. This is properly a matter for the Courts.

25. Accordingly, in the context of the current European legal framework, the Committee, with the exception of Robin Harper, Bruce Crawford and Fiona McLeod, is not able to support the petitioners’ request that the
Parliament should “exercise its powers not to permit the release of GM crops into the environment by way of trials or commercial planting.”

26. However, the Committee felt that, in order to address the concerns raised by FoE and to contribute to and inform public debate, it would be helpful to take evidence on potential risks associated with the release of GMOs. (This evidence is discussed in the next section.)

27. In addition, the Committee notes that the implementation of EU law is a matter in which the Parliament’s European Committee has an interest, and the Committee therefore brings the attention of this report to the European Committee, for possible further investigation as it sees fit.

ENVIRONMENTAL RISK OF GMO RELEASES

Risks Associated with GMO releases

28. In their evidence FoE contended that there are various possible risks associated with the release of GMOs. The Committee heard evidence that “the use of herbicides on herbicide-resistant crops might alter biodiversity if the herbicides are used at different times or are used more extensively…. Pest-resistant products are close to coming on the market. There might also be a loss of efficacy—some natural pesticides that are used in agriculture might lose their potency through overuse” (col 935).

29. In addition, FoE “do not yet see benefits to society that would justify the risks” of GM releases, and suggest that more laboratory work is required before the commercial release of crops is permitted (col 937).

30. RSPB Scotland also raised concerns. In their written submission RSPB Scotland suggest that “the introduction of certain types of GM crops, based on existing scientific research, could exacerbate the already serious declines in farmland wildlife”. In oral evidence, RSPB Scotland stated that they were “especially concerned that the expansion of GM crops and the use of GM crops in the landscape will exacerbate an already serious problem in relation to the decline in farmland biodiversity” (col 943).

Laboratory Testing and Farm-scale Trials

31. In considering the environmental risks associated with GMOs, the Committee notes the distinction between testing GM releases in laboratory conditions, and testing the effect of GM releases in farm scale trials in order to ascertain their effect on crop management practices and biodiversity. As their evidence above indicates, FoE do not object to laboratory tests on GMOs, but support a blanket ban on farm-scale trials.

32. In considering the implications of making such a distinction, the Committee notes that under the current European framework, farm-scale trials of GMOs

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6 Scottish Parliament Petition PE51
7 Submission by RSPB Scotland, September 2000
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can not occur until after laboratory testing has been completed. The Committee heard from ACRE that “GM crops are released in a step-by-step process. All GM crops that are released to the environment will, at some stage, have gone through laboratory and glass-house testing beforehand.” (Col 981).

33. The Committee also notes that farm-scale testing is thought to be necessary for a full understanding of the effects of GM releases. ACRE stated that “one cannot adequately test for environmental impact in the laboratory. That is part of the process, but it cannot be the only story. One must be able to bring things out into the environment step by step”. (Col 981)

34. In this context the Committee also notes that European Directive 90/220/EEC suggests that GM releases are a necessary part of on-going research into GM products. It states: “the deliberate release of GMOs at the research stage is in most cases a necessary step in the development of new products derived from, or containing, GMOs”.

35. The Committee, with the exception of Robin Harper, Bruce Crawford and Fiona McLeod, supports such a precautionary approach to GM releases. Consequently, the majority of members consider that, in the context of the European legal framework, there is a role for farm scale trials in a rightly cautious, but not unnecessarily restrictive, approach to GM development.

36. Members also noted that GM development is a global issue, and that banning farm-scale trials in Scotland, or Europe, would not stop GM development in other parts of the world, where a less rigorous approach to risk management might be adopted.

37. The Committee notes that in oral evidence, FoE themselves stepped back from the idea of a blanket ban on GM releases. FoE stated that “it is not open to us to impose a blanket ban and to say that we will have no GMOs in Scotland under any circumstances” (Col 941).

Approach of ACRE and Wider Impact of GMO releases

38. The Committee took evidence on the role of ACRE in the approval of farm-scale trials.

39. The Committee noted that ACRE operates a “case by case” approach in considering the risks associated with the release of GMOs. The Committee supports such an approach and considers that each application should be looked at individually on its own merits, taking into account factors such as the variety of GMO involved and the proposed location of the release.

40. Those who gave evidence to the Committee recorded their confidence in the scientific advice offered by ACRE to Ministers in relation to case by case
approvals of specific farm-scale trials. RSPB Scotland, for example, stated that “the advice that we get from our scientists who sit on ACRE is that the process seems to be fairly rigorous and we are happy with what is happening” (col 946).

41. The Committee, therefore, has not received evidence which leads it to doubt ACRE’s assertion that “to date, we have no evidence that the GMOs that we have examined—the 180 small, part B releases that were carried out in contained conditions, where the risk was strictly managed, and the few instances of slightly larger-scale growing of herbicide-tolerant crops, which are being assessed at the moment—cause harm to the environment” (Col 975).

42. While the Committee is supportive of ACRE’s work in approving farm-scale trials, and considers that, in general terms, ACRE is operating effectively, members also recognise that a consensus view does not currently exist on the safety of GMOs.

43. In addition, the Committee notes the distinction made by Dr Ulrich Loening between the case by case analyses of immediate impacts of GM crops undertaken by ACRE, and consideration of the broader longer term impact of GM technology. In oral evidence Dr Loening stated that case by case analysis “needs to be done and bodies such as ACRE are doing a very good job on it” (Col 952). However, Dr Loening contended that insufficient research is being done on the longer term and broader impact of GMOs.

44. The Committee recognises the limitations of farm-scale trials in addressing all questions relating to GM technology and concurs with the view there is scope for advisory bodies to take a longer term and broader view of the environmental impact of the release of GMOs.

45. The Committee therefore considers that further research is needed into the potential environmental risks associated with GM releases, and that such research should continue to address not just biotechnology issues but also wider agricultural management and socio-economic issues.

46. The Committee suggests that such analysis would fall within the remit of the AEBC, and therefore recommends that the AEBC takes into account the issues raised by FoE, RSPB Scotland, Dr Loening and other relevant parties, relating to the broader, long-term and socio-economic aspects of GMO releases, in drawing up its forward work programme.

47. In considering the broader environmental impact of GMOs, the Committee also wishes to highlight the importance of the UK continuing to possess a significant independent research capacity. The Committee felt that if such a research capacity existed, more research could be undertaken into issues such as the transfer of genes from GM crops to the subsoil.
ADVISORY FRAMEWORK ON GMOs

48. A further request in Petition PE51 is that a mechanism is established in Scotland to address the concerns regarding the impact of GM releases on the environment and human health (by way of an inquiry, an independent Commission or Advisory Body).

Distinctive Scottish Interests

49. The Committee took evidence on whether distinctive Scottish interests existed in relation to GM releases that might necessitate a separate GM advisory body in Scotland.

50. In a written submission to the Committee, RSPB Scotland identified “agronomic, environmental, and broader “branding” issues that are peculiar to Scotland, and which may be affected by the GM crop issue”\(^9\). RSPB Scotland suggested that these issues included the crofting system, the clean environmental image used to trade and market products in Scotland (for example whisky and tourism), and the higher use of forage crops in Scotland than the rest of the UK.

51. FoE suggested that while “from a scientific point of view, there is nothing particularly distinctive about Scottish circumstances. However, there might be economic and social differences” (col 938). FoE cite, for example, the larger proportion of oil-seed rape farming found in Scotland than in England and the existence of crofting land in Scotland.

52. The Scottish Crop Research Institute contended that there was no set of environmental conditions that made Scotland uniquely different from the rest of the UK, but did note that “there are potentially relevant regional variations in the environment throughout the UK, for example in climate, flora and fauna, and agricultural practices”\(^10\).

53. In evidence to the Committee, the AEBC stated that “we accept that there will be issues in Scotland that require to be addressed specifically” and an example cited was the impact of GMOs on crofting (Col 993).

54. The Committee therefore felt that there was evidence that distinctive Scottish interests existed in relation to GMOs, and that it was justifiable for the Committee to consider whether the current advisory framework acknowledges and addresses these interests.

Effectiveness of Current Advisory Bodies

55. The Committee therefore took evidence on whether the existing GM advisory framework adequately represented these distinctive Scottish interests.

\(^9\) Submission by RSPB Scotland, September 2000
\(^10\) Submission by Scottish Crop Research Institute, September 2000
56. The Committee heard from ACRE representatives that “two members of ACRE are from Scotland, although like all ACRE members they were appointed purely for their scientific expertise and not because they represent particular interest groups” (col 972).

57. In their evidence, FoE expressed satisfaction with the degree of Scottish representation on ACRE, and suggested that “on a case-by-case approach, the framework is reasonable and I would not want to substitute it with a Scottish framework. We are focusing on the citizen end of it. The public wants some locus for their voice to be heard and for some Scottish expression of opinion on a matter that is devolved to Scotland” (col 943).

58. FoE also stated that the AEBC, which was formed after the submission of Petition PE51, “goes some way towards meeting our concerns at UK level”. But they also stated that “we feel that the commission is not sufficient to respond to Scottish concerns and interests, because Scotland is insufficiently represented on it” (col 934).

59. In a written submission, the AEBC noted that all AEBC appointments were made in consultation with the devolved administrations and that two AEBC members were specifically appointed by Ministers from devolved administrations. In oral evidence, an AEBC representative also stated that “we accept that there will be issues in Scotland that require to be addressed specifically. The commission will have a duty to do that; I believe that it will be willing to do it and to advise Scottish ministers about those issues” (col 993).

60. The terms of reference for the AEBC state that it will “nationally, adopt a UK perspective, taking into account of legal and other differences between England, Scotland, Wales and Northern Ireland”.

61. The Committee, with the exception of Robin Harper MSP, did not agree with FoE that the AEBC would not be able, or willing, to represent Scottish interests. The Committee noted that the AEBC was a new body and that it should be given an opportunity to begin its work programme and to prove it could take Scottish interests into account, before alternative Scottish bodies are proposed. Members also noted that it was open to the Scottish Parliament and its Committees to monitor the on-going work of the AEBC to ensure it continued representing Scottish interests in the future.

62. Members were impressed by the willingness of the AEBC to consult on its work programme and welcomed its intention to operate in an open transparent manner. The Committee wishes to encourage participation in the development of the AEBC work programme, and would highlight the opportunity for specific consideration to be given to what might constitute distinctively Scottish interests.

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11 Submission from AEBC, September 2000
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63. Therefore the Committee, with the exception of Robin Harper MSP, Bruce Crawford and Fiona McLeod, felt unable to support the call by FoE for a separate Scottish GM advisory body. This was principally because such a body might unnecessarily replicate the work of ACRE and the AEBC, and because the Committee was optimistic that the AEBC was willing to take account of specific Scottish issues in its work.

Public Involvement in relation to GMO Releases

64. In considering the possible future work of the AEBC, the Committee was particularly interested in the question of public involvement in, and public attitudes to, the process of approving GMOs releases.

65. The Committee is concerned that despite reassurances from the Scottish Executive and GM advisory bodies, there still exists public concern regarding the risks associated with GM releases, with many people apparently unwilling to accept scientists’ reassurances. The Committee feels that this is a matter which the AEBC could and should address. In this context, the Committee notes that the terms of reference of the AEBC encompasses the “public acceptability” of GM developments, and that it commits the AEBC to “seek to involve and consult stakeholders and the public on a regular basis on the issues it is considering”.

66. The Committee also notes the existence of a strong feeling that the process of approving GM releases needs to be more transparent. The Committee considers that there ought to be greater transparency in the GM approval process, and that the AEBC should consider how to effect such a change.

67. Greater transparency should operate on different levels, beginning with a greater dissemination of information regarding GM farm-scale trials at a local community level to greater transparency in the processes of Ministerial decision-making.

68. In this context, the Committee recommends that as part of the approval process for farm-scale trials, companies undertaking trials should be required to set out how they propose to inform local communities of the trials. The Committee also recommends that the Scottish Executive, ACRE and other stakeholders should discuss and agree the minimum information standards to be required of companies, including the level and nature of information and the way in which it should be provided.

69. Greater transparency is also required in the process of Ministerial decision-making and the Committee therefore recommends that the Executive, in consultation with ACRE and other key bodies such as Scottish Natural Heritage, consider how this should be achieved and that they publish and implement their findings.

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12 Submission from AEBC, September 2000
70. Having emphasised the importance of keeping the public informed during the GM approval process, the Committee also acknowledges that a distinction should be made between the proper roles of scientists and public in the process.

Costs of Approvals of GM releases
71. While strongly supporting a move towards greater transparency in the GM release process, the Committee is keen that this should not involve any additional expenditure by public bodies.

72. The Committee considered in general terms the costs of approving GM releases and, in particular, the costs imposed on the applicants seeking approval for the releases. In evidence from the Scottish Executive, the Committee heard that applicants “certainly pay for the costs of the regulator and the inspection. Whether that amounts to the full cost is difficult to ascertain, but a statutory fees and charges regime is imposed on all applicants, regardless of whether the application is successful” (col 1011).

73. **The Committee supports the general principle that the costs of seeking approval for GM releases should be met by the applicant, and the Committee would encourage the Scottish Executive to work within this principle where possible.**

Advanta Contamination Incident
74. An event which has highlighted the need for transparency and clarity in the operation of the GM advisory framework was the recent incident in which oilseed rape seeds distributed by Advanta Seeds in Lincolnshire, which had been accidentally contaminated with GM seeds, were planted in Scotland.

75. The Committee was concerned to hear from the Scottish Crop Research Institute, which had planted Advanta seeds for trial purposes, that “even though we were deeply involved, the first that we knew about the issue was from the radio” (col 923).

76. The Committee also heard from RSPB Scotland that it had unwittingly planted GM contaminated seeds. In oral evidence RSPB Scotland stated that “once the release had occurred, we were extremely concerned that the mechanisms were not in place to deal with the situation. When we asked what we had to do, we got no sound advice from the Scottish Executive rural affairs department. In fact, people in that department were running around asking the same question. There should be a mechanism in place to guide the situation if such releases happen in the future” (col 950).

77. The Committee took evidence from the Scottish Executive on what new mechanisms had been put in place to handle such incidents in the future. An official stated that “there are internal procedures for dealing with such incidents, and key officials are immediately brought together. Of course, the individual circumstances of any incident must be considered to decide how to deal with each case. The simple answer to your question is that there is no
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one document that says how we would deal with an incident. However, I can assure you that lessons have been learned from the Advanta incident and have been addressed, not only by the Executive but by the Ministry of Agriculture, Fisheries and Food and other departments” (col 1013).

78. The Committee agrees with RSPB Scotland that new guidelines should be introduced by the Executive on how to handle future accidental releases of GMOs. However, in the view of the Committee this straightforward, but important, precaution has not yet been taken. In particular, the Committee was surprised and concerned to learn that there is no clear, unified and publicly documented procedure which sets out how to deal with such incidents.

79. The Committee strongly recommends that such a document is produced as a matter of urgency, after consultation with the appropriate bodies.