1. **Decision on taking business in private:** The Committee will decide whether to take item 5 and all future consideration of its work programme in private.

2. **Subordinate legislation:** The Committee will take evidence on the Climate Change (Annual Targets) (Scotland) Order 2011 (SSI 2011/draft) from—
   Stewart Stevenson MSP, Minister for Environment and Climate Change, Gabby Pieraccini, Team Leader, and Andrew Henderson, Policy Officer, Directorate for Energy and Climate Change, Scottish Government.

3. **Subordinate legislation:** Stewart Stevenson MSP to move S4M-00909 Stewart Stevenson: —that the Rural Affairs, Climate Change and Environment Committee recommends that the Climate Change (Annual Targets) (Scotland) Order 2011 [draft] be approved.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—
   the Inshore Fishing (Prohibition of Fishing for Cockles) (Solway Firth) (Scotland) Order 2011 (SSI 2011/319);
   the Bananas (Enforcement of Quality Standards) (Scotland) Regulations 2011 (SSI 2011/325); and
   the Bees Diseases and Pests Control (Scotland) Amendment Order 2011 (SSI 2011/326)

5. **Work programme:** The Committee will consider its work programme.
The papers for this meeting are as follows—

**Agenda item 2**

*The Climate Change (Annual Targets) (Scotland) Order 2011 (SSI 2011/draft)*

PRIVATE PAPER RACCE/S4/11/6/1 (P)

**Agenda item 4**

*Inshore Fishing (Prohibition of Fishing for Cockles) (Solway Firth) (Scotland) Order 2011 (SSI 2011/319)*

*Bananas (Enforcement of Quality Standards (Scotland) Regulations 2011 (SSI 2011/325)*

*Bee Diseases and Pests Control (Scotland) Amendment Order 2011 (SSI 2011/326)*

Cover note RACCE/S4/11/6/2

**Agenda item 5**

PRIVATE PAPER RACCE/S4/11/6/3 (P)
Title of Instrument | The Inshore Fishing (Prohibition of Fishing for Cockles) (Solway Firth) (Scotland) Order 2011
--- | ---
Type of Instrument | Negative
Laid Date | 7 September 2011
Circulated to Members | 13 September 2011
Meeting Date | 28 September 2011
Minister to attend the meeting | No
SSI drawn to the Parliament’s attention by Subordinate Legislation Committee | Yes
Reporting Deadline | 24 October 2011

Purpose
1. This Order prohibits all methods of fishing for cockles in the Solway Firth.

2. Cockle fishing in the Solway Firth is currently prohibited, subject to licence, under the Solway Firth Regulated Fishery (Scotland) Order 2006 (“the 2006 Order”). However, the 2006 Order expired on 14 September 2011. Subject to very limited exceptions, no licences authorising cockle fishing in the Solway Firth have been issued under the 2006 Order since the end of the 2007-08 season, due to depleted stocks. In effect, therefore, the Solway Firth has been closed to cockle fishing since that time. However, unlike the 2006 Order, this Order does not allow hand gathering of cockles for personal consumption. This is so that the Order can be enforced as effectively as possible.

3. The Order was made by the Scottish Ministers under sections 1 and 2A of the Inshore Fishing (Scotland) Act 1984 on 5 September 2011. It was laid before the Scottish Parliament on 7 September 2011, and came into force on 15 September 2011.

4. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, the letter to the Presiding Officer, a copy of which is annexed hereto, explains the Scottish Government’s reasons why.
5. A copy of the **Explanatory Note** and the **Executive Note** are included with the papers.

**Procedure**

6. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.

7. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

**Subordinate Legislation Committee Report**

8. At its meeting on 20 September 2011, the Subordinate Legislation Committee agreed to draw this Instrument to the attention of Parliament.

9. This instrument has not been laid at least 28 days before coming into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and as such, the Committee draws the instrument to the attention of the Parliament under reporting ground (j). However, in so doing the Committee notes the Government’s apology and commitment to ensure that future projects are managed more efficiently.

10. The Committee therefore draws the attention of the lead committee to the instrument as, although the accompanying documents indicate that the instrument is to be a temporary measure, there is nothing in the instrument itself which achieves that policy objective.

11. An extract of the report of the meeting is attached at Annexe A.
Purpose

12. The purpose of this instrument is to re-establish a statutory framework for the enforcement of the EU marketing rules for bananas, specifically unripened green bananas, as provided for in Part XI of Annex I to Council Regulation 1234/2007/EC, Commission Regulation 2257/94/EC and Commission Regulation 2898/95/EC (which provides for verification of compliance with the standards). The standards have not changed since 2006.

13. Green bananas were previously inspected and any enforcement taken using powers contained in the Agriculture and Horticulture Act 1964 (as amended by the Horticultural Produce Act 1986), as modified to apply to produce covered by EU marketing standards by the Grading of Horticultural Produce (Amendment) Regulations 1973 (SI 1973/22).

14. The Marketing of Horticultural Produce (Scotland) Regulations 2009 (SSI 2009/225) (“the 2009 Regulations”), which provide for the enforcement of the revised marketing standards for fresh fruit and vegetables (excluding bananas) revoked the 1973 Regulations in Scotland. As a result the powers under the 1964 Act no longer apply to produce subject to EU marketing standards and hence there are no powers to inspect and enforce the relevant banana standards. This was an error at the time of making the 2009 Regulations. A new SSI is required for the enforcement of the standards for green bananas and to fulfil the statutory EU obligations. The current instrument is based to a large extent on the 2009 Regulations, given the close connection between the relevant EU rules, subject to adaptation to those requirements which are specific to the banana sector. The same issue has arisen in Northern Ireland, England and Wales and those Administrations are making similar provisions there.

15. A copy of the Explanatory Note and the Executive Note are included with the papers.
Subordinate Legislation Committee Report
16. At its meeting on September 20 2011, the Committee considered this instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

SSI 2011/326

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<th>Title of Instrument</th>
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<td>No</td>
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<td>31 October 2011</td>
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Purpose
17. This Order amends the Bee Diseases and Pests Control (Scotland) Order 2007. It makes provision for the enforcement in Scotland of Article 13 of Commission Regulation (EU) No 206/2010 laying down lists of third countries, territories or parts thereof authorised for the introduction into the European Union of certain animals and fresh meat and the veterinary certification requirements. Article 13 of that Regulation imposes conditions that apply following the introduction of certain species of queen bees and bumble bees (Apis mellifera and Bombus spp.) from third countries into Scotland.

18. A copy of the Explanatory Note and the Executive Note are included with the papers.

Subordinate Legislation Committee Report
19. At its meeting on 20 September 2011, the Committee considered this instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Recommendation
20. The Committee is invited to consider any issues which it wishes to raise in reporting to the Parliament on these instruments.

Lynn Tullis/Simon Watkins
Clerks to the Rural Affairs, Climate Change and Environment Committee
Inshore Fishing (Prohibition of Fishing for Cockles) (Solway Firth) (Scotland) Order 2011 (SSI 2011/319) (Rural Affairs, Climate Change and Environment Committee)

12. This Order is subject to the negative procedure. It prohibits fishing for cockles by any method or means in the Solway Firth. Fishing for cockles in the Solway Firth has been regulated for some time. In 2006, the Scottish Ministers made the Solway Firth Regulated Fishery (Scotland) Order 2006 ("the 2006 Order"), which gave the Solway Shellfish Management Association the right to regulate fishing for cockles in the Solway Firth until 14 September 2011.

13. The Order was made on 5 September 2011, laid before the Parliament on 7 September and comes into force on 15 September 2011 so that the Solway Firth cockle fishery remains closed. It accordingly does not comply with the 28-day rule, as it was only laid 8 days prior to its coming into force. As a result, the Scottish Ministers wrote to the Presiding Officer to explain this failure when the instrument was laid.

14. The letter to the Presiding Officer explained that the reason for this failure to comply with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 was that prior to the making of the Order various options had to be explored for the management of cockle fishing in the Solway Firth. On 9 September 2011, the Committee asked why, however, it was necessary for those options to be pursued past the point at which this Order might have been made while complying with the requirements of section 28(2). A copy of this correspondence is appended hereto.

15. The Scottish Government, in its response, concedes that the Order should have been laid timeously and that it should have taken steps to reassess the position. It apologises for failing to comply with the laying requirements and states that it will ensure that future projects are managed more efficiently. The Committee further notes and takes into account that, in relation to this instrument, the Scottish Government had been focused on securing a solution by means of the most appropriate legislative option.

16. This instrument has not been laid at least 28 days before coming into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 and as such, the Committee draws the instrument to the attention of the Parliament under reporting ground (j). However, in so doing the Committee notes the Government’s apology and commitment to ensure that future projects are managed more efficiently.

17. Furthermore, the Committee notes that the letter to the Presiding Officer and the Executive Note both indicate that the Order is intended to be a temporary measure. It replaces the 2006 Order which itself was time-limited. However, there
is nothing in this Order which imposes a time limit or expiry date. The Order will continue to be in force until it is revoked.

18. The Committee therefore draws the attention of the lead committee to the instrument as, although the accompanying documents indicate that the instrument is to be a temporary measure, there is nothing in the instrument itself which achieves that policy objective.

Appendix

The Inshore Fishing (Prohibition of Fishing for Cockles) (Solway Firth) (Scotland) Order 2011 (SSI 2011/319)

Correspondence referred to

On 9 September 2011, the Scottish Government was asked:

We observe that the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with, and that accordingly a letter to the Presiding Officer explaining the reasons for that non-compliance has been provided, in accordance with section 31(3) of that Act. In that letter, the Scottish Government makes reference to the existing regime under which cockle fishing in the Solway Firth is regulated, the Solway Firth Regulated Fishery (Scotland) Order 2006 (“the 2006 Order”), and notes that the 2006 Order will expire on 14 September 2011. We note that article 3 of the 2006 Order makes provision to this effect. We further note that Marine Scotland has been in the process of exploring new management options over recent months, and has considered different legislative means to achieve the desired regulation of cockle fishing in the Solway Firth. The letter explains that “it was important to pursue these options so far as possible before making this Order.”

The letter does not, however, explain why it was necessary for those options to be pursued past the point at which this Order might have been made while complying with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The Scottish Government is asked to explain why this was the case.

The Scottish Government responded as follows:

Whilst exploring new management options for cockle fishing in the Solway Firth, the Scottish Government was optimistic that an alternative suite of management measures could be introduced relatively quickly. In recognising this, it escalated discussions with local parties to try and agree alternative measures to take effect from 15 September 2011. The Scottish Government's intention in pursuing these measures, so far as possible before making this Order, was to secure the most appropriate legislative option and avoid wasting parliamentary time. It was keen to avoid making an Order that would potentially be replaced within a very short time. The Scottish Government now recognises that this aim was overly ambitious as, unfortunately, it has not been achieved.
Regrettably, the Scottish Government focused its resources and effort on progressing the discussions to achieve the desired outcome, rather than execute its contingency plan timeously. Given the clear parliamentary deadlines, the Scottish Government acknowledges that it should have reassessed its position earlier and laid this Order in sufficient time to meet the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The Scottish Government apologises for this, and will ensure that future projects of this kind are managed more effectively to comply with statutory laying requirements.

LETTER FROM THE SCOTTISH GOVERNMENT TO THE PRESIDING OFFICER

7 September 2011

Dear Presiding Officer,

THE INSHORE FISHING (PROHIBITION OF FISHING FOR COCKLES) (SOLWAY FIRTH) (SCOTLAND) ORDER 2011 (SSI 2011/319)

The above Order was made by the Scottish Ministers under sections 1 and 2A of the Inshore Fishing (Scotland) Act 1984 on 5 September 2011. It is being laid before the Scottish Parliament today, 7 September 2011, and comes into force on 15 September 2011.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp10) (“the 2010 Act”) has not been complied with. In accordance with section 31(3) of the 2010 Act, this letter explains why.

Reason for non compliance

Cockle fishing in the Solway Firth is currently prohibited, subject to licence, under the Solway Firth Regulated Fishery (Scotland) Order 2006 (“the 2006 Order”). Subject to very limited exceptions, no licences authorising cockle fishing in the Solway Firth have been issued under the 2006 Order since the end of the 2007-08 season. This is due to depleted stocks. However, the 2006 Order will expire on 14 September 2011, resulting in an unregulated fishery.

While the Solway Firth cockle fishery is of value to commercial fishing interests, it is also important from a marine nature conservation perspective. In particular, the Solway Firth includes a Special Protection Area (SPA). Consequently, the fishery must be managed or regulated in a way that ensures a sufficient amount of cockle biomass is available as an essential food source for important shorebird populations.

Based on the most recent (2009) survey of the Solway Firth’s cockle grounds, and advice from Marine Scotland Science, the situation is that the cockle stocks remain insufficient to allow the fishery to be completely reopened or left unregulated.

Accordingly, over recent months, Marine Scotland has engaged with a number of local parties considering becoming involved in future, sustainable management or exploitation of the Solway Firth cockle fishery. This has involved exploring new
management options for the Solway Firth, including making a new Regulating Order or Several Orders under the Sea Fisheries (Shellfish) Act 1967.

These discussions have been constructive. There is potential to agree new management arrangements for the Solway Firth or, alternatively, reopen parts of the fishery (where there are discrete pockets of possibly exploitable cockles) for cultivation and sustainable harvesting. While it remains feasible that one or more of these options will be pursued, unfortunately no final management arrangements have yet been agreed. It has become apparent that further time is needed before any actual management plan can be put in place. However, it was important to pursue these options so far as possible before making this Order.

The Order is necessary to avoid the fishery becoming unregulated when the 2006 Order expires on 14 September 2011. An unregulated fishery could seriously jeopardise the recovery of cockle stocks in the area and have a negative impact on the SPA. Also, there are various health and safety concerns associated with an unregulated cockle fishery.

This Order is a temporary measure: the intention is to reopen the Solway Firth cockle fishery once stocks have recovered, or when appropriate management arrangements are put in place. To properly conserve stocks, the Order has to come into force on 15 September 2011. Regrettably, therefore, it is not possible to comply with the laying requirements of section 28(2) of the 2010 Act.