



Environment and Rural Development Committee

9th Meeting, 2006

Wednesday 15 March 2006

The Committee will meet at 9.45 am in Committee Room 1.

1. **Items in private:** The Committee will consider whether to take item 6 in private, and whether to consider a draft report on the biomass inquiry in private at subsequent meetings.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—

the Solway Firth Regulated Fishery (Scotland) Order 2006, (SSI 2006/57);
and

the Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Order 2006,
(SSI 2006/58).

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

the Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland)
Regulations 2006, (SSI 2006/45)

and will take evidence from Rhona Brankin MSP, Deputy Minister for
Environment and Rural Development.

4. **Animal Health and Welfare (Scotland) Bill:** The Committee will consider the Bill
at Stage 2 (Day 1).
5. **Subordinate legislation:** Rhona Brankin MSP, Deputy Minister for Environment
and Rural Development, to move motion S2M-4004—

That the Environment and Rural Development Committee recommends that
the draft Water Environment (Consequential and Savings Provisions)
(Scotland) Order 2006 be approved.

6. **Inquiry into developments in the biomass industry:** The Committee will consider the evidence received to date for this inquiry.

Mark Brough
Clerk to the Committee
Direct Tel: 0131-348-5240

The following papers are attached:

<p><u>Agenda Item 2</u></p>	
<p><u>The Solway Firth Regulated Fishery (Scotland) Order 2006, (SSI 2006/57)</u></p>	ERD/S2/06/9/2a
<p><u>The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Order 2006, (SSI 2006/58)</u></p>	ERD/S2/06/9/2b
<p><u>Agenda Item 3</u></p>	
<p><u>The Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006, (SSI 2006/45)</u></p>	ERD/S2/06/9/3a
<p>Extract from the Subordinate Legislation Committee's 11th Report, 2006</p>	ERD/S2/06/9/3b
<p><u>Agenda Item 5</u></p>	
<p><u>The draft Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006</u></p>	ERD/S2/06/9/5a
<p><u>Agenda Item 6</u></p>	
<p>Paper from the clerk [<i>Members only</i>]</p>	ERD/S2/06/9/6a

SSI DESIGNATION FORM

SSI Title & No:	The Solway Firth Regulated Fishery (Scotland) Order 2006, (SSI 2006/57)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)		Negative	10.4		✓
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development		Other Committee				
Purpose of Instrument	This Order confers upon the Solway Shellfish Management Association Ltd. the right of regulating a fishery for cockles in the area of the Solway Firth until 14 th September 2011.						

Laid Date	10 th February 2006	40 day date	30 th March 2006
1st SLC Meeting	21 st February 2006	20 day date	11 th March 2006
Lead Committee Report Due	27 th March 2006	Other Committee Report Due	

SE Contact	Eamon Murphy, ext. 44976
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes				Partially Revokes			
Executive Note	✓	Regulatory Impact Assessment	✓	European Regulations/ Directives				
Additional Information								

SSI DESIGNATION FORM

SSI Title & No:	The Inshore Fishing (Prohibition of Fishing for Cockles) (Scotland) Order 2006, (SSI 2006/58)					
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	This Order provides for the prohibition of fishing for cockles from or by means of any vehicle in Scottish inshore waters. The area of the Solway Firth is excepted from this Order.					

Laid Date	10 th February 2006	40 day date	30 th March 2006
1st SLC Meeting	21 st February 2006	20 day date	11 th March 2006
Lead Committee Report Due	27 th March 2006	Other Committee Report Due	

SE Contact	Eamon Murphy, ext. 44976
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes			Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment	✓	European Regulations/ Directives				
Additional Information								

SSI DESIGNATION FORM

SSI Title & No:	The Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006, (SSI 2006/45)					
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development					
Standing Order	Affirmative	10.6.1(a)		Negative	10.4	✓
		10.6.1(b)			10.5	
	10.6.1(c)		Other	NL		NP
Lead Committee	Environment and Rural Development		Other Committee			
Purpose of Instrument	These Regulations implement Council Directive 2003/85/EC in relation to control measures for foot-and-mouth disease. The Regulations provide powers to vaccinate susceptible animals and sets the framework for how the powers would be used.					

Laid Date	7 th February 2006	40 day date	27 th March 2006
1st SLC Meeting	21 st February 2006	20 day date	8 th March 2006
Lead Committee Report Due	20 th March 2006	Other Committee Report Due	

SE Contact	Debbie King, ext. 46453
Committee Contact	Mark Brough, 85240

For SLC use:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes			Partially Revokes				
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives	EC 1492/2004			
Additional Information								

Subordinate Legislation Committee

Extract from the 11th Report, 2006 (Session 2)

Subordinate Legislation

The Committee reports to the Parliament as follows—

Instruments subject to annulment

The Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006, (SSI 2006/45)

1. The Committee noted that in regulation 7(b) “the 1978 Order” is not defined and asked the Executive to clarify whether this is intended to refer to the Order cited in subparagraph (a) (the Diseases of Animals (Approved Disinfectants) Order 1978). The Executive, in its response printed at Appendix 2 confirmed that this is the intention of the reference.
2. The Committee considers that whilst regulation 7(b) would probably be interpreted in this way, it would have been clearer had the words “that Order” been used as in the English Regulations (the Foot-and-Mouth Disease (Control of Vaccination) (England) Regulations 2006).
3. **The Committee draws the attention of the lead Committee and Parliament to the Regulations on the grounds of defective drafting.**
4. The Committee was not clear about the intended meaning of “in exercise of their powers under Schedule 3 paragraph 3(1) to the Act” in regulation 8(2)(a). This paragraph permits Ministers to slaughter animals in certain circumstances and it was unclear whether the intention of the Regulations is to extend these circumstances. A similar point arises in relation to regulation 9(1)(a)(i). The Committee sought clarification of the position.
5. In its response printed at Appendix 2, the Executive has explained the purpose of regulations 8(2)(a) and 9(1)(a)(i) and it appears that the intention is to create new powers of slaughter and not to apply the powers in Schedule , paragraph 3(1) of the 1981 Act. On this basis, the Committee considers that the words “in exercise of the powers in Schedule 3 paragraph 3(1)” do not seem to reflect the policy intention.
6. **The Committee therefore draws the attention of the lead Committee and Parliament to the Regulations on the grounds of defective drafting.**

7. The Committee asked the Executive why regulation 9, which imposes a duty on Ministers to slaughter animals in certain circumstances, should be subject to regulation 8, which confers power on Ministers to slaughter animals to implement a preventive eradication programme.

8. In its response printed at Appendix 2, the Executive accepted that Regulation 9 should be expressed as being subject to regulation 10 (exemption from slaughter), and that there had been a drafting error. It considers that the error will not lead to any practical difficulties in interpretation, and that an amendment will be brought forward at the next convenient opportunity.

9. The Committee therefore draws the attention of the lead Committee and Parliament to the Regulations on the grounds of defective drafting.

10. The Committee sought an explanation from the Executive of why in regulation 10(3) the definition of “separate production units” contained in article 12(1) of the order is applied, as that definition does not apply to infected premises. It was not clear to the Committee therefore, how sub-paragraph (d) of that article will apply.

11. In its response printed at Appendix 2, the Executive explained that regulation 10 provides for exemption from slaughter under regulation 9, and under regulation 8 insofar as animals on the separate production units will not come into categories listed in regulation 8(2)(a), (b) and (c).

12. The Executive added that the definition in article 12(1) of the Order seeks to address the situation where a premises is made up of more than one operational unit (farm) as defined in article 12 (1) (a)-(d).

13. The Committee accepts the reasons given by the Executive for the separation of units but has some difficulty with the drafting of regulation 10(3) and the definition of separate production units for the purpose of regulation 10. The difficulty stems from the fact that article 12 of the order does not apply to infected premises (whereas regulations 8 and 9 apply to premises where disease has been discovered) and depends on the fulfilment of certain preconditions. Once disease had been confirmed on premises it does not seem possible for the declaration to be made under article 12(1). Regulation 10(3) could therefore only apply where a declaration had already been made at a time when the whole premises were disease free.

14. The Committee considers that as drafted, regulation 10(3) will fulfil the stated policy intention only to a limited degree and draws the attention of the lead Committee and Parliament to the Regulations on the grounds of defective drafting.

APPENDIX 2

The Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006 (SSI 2006/45)

1. On 21 February 2006, the Subordinate Legislation Committee, having considered the above instrument, sought an explanation of the following matters:-

1. confirmation that in regulation 7(b) “the 1978 Order” which is not defined is intended to refer to the Order cited in subparagraph (a);
2. clarification of the purpose of regulations 8(2)(a) and 9(1)(a)(i), particularly where they state “in exercise of their powers under Schedule 3, paragraph 3(1) of the Act”;
3. clarification as to why regulation 9, which imposes a duty on Ministers to slaughter animals in certain circumstances, should be subject to regulation 8, which confers power on Ministers to slaughter animals to implement a preventive eradication programme;
4. an explanation as to why the definition of “separate production units” contained in article 12(1) of the Order is applied as that definition does not apply to infected premises and it is not clear how sub-paragraph (d) of that article will apply in context.

The Scottish Executive responds as follows:-

2. The Executive welcomes the opportunity to provide clarification in relation to the matters raised in the Committee’s letter.

First question

3. The Executive confirms that in regulation 7(b) “the 1978 Order” which is not defined refers to the Order cited in subparagraph (a).

Second question

4. Regulations 8(2)(a) and 9(1)(a)(i) make provision as to slaughter of animals as part of a programme of preventive eradication, and in response to confirmed cases, respectively. The Animal Health Act 1981, Schedule 3, paragraph 3(1) gives the Scottish Ministers power to slaughter certain animals in certain circumstances.

5. Whilst it is recognised that a different approach could have been followed, it was intended not to duplicate the powers in Schedule 3, paragraph 3(1) in the Regulations. Instead, the Regulations provide a sign-post to the existing powers of slaughter contained in Schedule 3, paragraph 3(1) of the 1981 Act. In addition, regulation 8(2)(b) and (c) provide power to slaughter those other animals for which a power of slaughter is needed but not provided by Schedule 3, paragraph 3(1); and regulation 9(1)(a) imposes a duty to slaughter both animals which can be slaughtered under Schedule 3, paragraph 3(1) and those other animals for which a duty to slaughter is needed.

Third question

6. Regulation 9 (duty to slaughter animals in certain circumstances) should be expressed as being subject to regulation 10 (exemption from slaughter) – it appears that an error has crept in during the drafting process. The Executive is grateful to the Committee for drawing this matter to its attention. It is not considered that the error will lead to any practical difficulties in interpretation in the meantime, and the Executive will bring forward an amendment at the next convenient opportunity.

Fourth question

7. Regulation 10 provides for exemption from slaughter under regulation 9, and under regulation 8 insofar as animals on the separate production units will not come into the categories listed in regulation 8(2)(a), (b) and (c).

8. The definition in Article 12 (1) of the Order seeks to address the situation where a premises (typically owned or managed by one individual, recorded at one address) is physically made up of one or more operational units (farms), as defined in Article 12 (1)(a)-(d). These units may be so effectively separated (geographically and/or by management practices) that, in disease control terms, it is safe to regard them as separate premises. The premises can then be said to consist of one or more units where disease is actually present, and one or more “free” units where the disease is not present and unlikely to be transmitted. The determination of “free” units would be made on advice from the Chief Veterinary Officer (Scotland). Slaughter must take place on the units where the disease is present but the free units are eligible for exemption from slaughter.

9. In the context of a disease outbreak these separate production units will be subject to significant veterinary investigation and consideration before the Chief Veterinary Officer (Scotland) is satisfied that it is safe to allow the exemption. It is therefore considered that in practice no confusion will arise in the operation of this article.

SSI DESIGNATION FORM

SSI Title & No:	The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006, (SSI 2006/draft)						
Responsible Minister	Ross Finnie, Minister for Environment and Rural Development						
Standing Order	Affirmative	10.6.1(a)	✓	Negative	10.4		
		10.6.1(b)			10.5		
	10.6.1(c)		Other	NL		NP	
Lead Committee	Environment and Rural Development Committee		Other Committee				
Purpose of Instrument	The purpose if this Order is to make amendments consequential upon the 2003 Act and regulatory regime which controls activities which impact on the water environment established in the Water Environment (Controlled Activities) (Scotland) Regulations 2005 made under section 20 of the 2003 Act.						

Laid Date	16 th February 2006	40 day date	31 st March 2006
1st SLC Meeting	28 th February 2006	20 day date	11 th March 2006
Lead Committee Report Due	27 th March 2006	Other Committee Report Due	

SE Contact	Susan Shaw, ext. 44965
Committee Contact	Mark Brough, 85240

For SLC Use Only:

Article 10 Compliance	Breaks 10(1) rule		Breaks 10(2) rule		PO Letter dated		PO Letter received	
Revocations	Revokes	See Part II		Partially Revokes	See Part II			
Executive Note	✓	Regulatory Impact Assessment		European Regulations/ Directives				
Additional Information								