



The Scottish Parliament
Pàrlamaid na h-Alba

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

7th Meeting, 2018 (Session 5)

Tuesday 27 February 2018

The Committee will meet at 9.30 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 3 and 4 in private.
2. **Subordinate legislation:** The Committee will take evidence on the reasoning for a breach of parliamentary procedure on the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017 (SSI 2017/451) from—

Paul Wheelhouse, Minister for Business, Innovation and Energy, Joanna Dingwall, Solicitor, Rural Affairs, and Gayle Holland, Compliance Manager, Marine Scotland, Scottish Government.
3. **Inquiry into the environmental impacts of salmon farming:** The Committee will consider its draft report to the Rural Economy and Connectivity Committee.
4. **Inquiry into EU environmental and animal welfare principles:** The Committee will consider its approach to the inquiry.

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Clerk to the Environment, Climate Change and Land Reform Committee
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The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

Agenda item 2

Subordinate legislation cover note

ECCLR/S5/18/7/1

Agenda item 3

PRIVATE PAPER

ECCLR/S5/18/7/2
(P)

Agenda item 4

PRIVATE PAPER

ECCLR/S5/18/7/3
(P)

Environment, Climate Change and Land Reform Committee

7th Meeting, 2017 (Session 5)

Tuesday 27 February 2018

Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017 (SSI 2017/451)

Background

1. At its meeting on 23 January 2018, the Committee considered the [Electricity Works \(Environmental Impact Assessment\) \(Scotland\) Amendment Regulations 2017 \(SSI 2017/451\)](#).
2. During its [consideration of the instrument](#), the Committee agreed to invite the Minister for Business, Innovation and Energy, Paul Wheelhouse MSP, to give evidence to the Committee on the breach of the [28 day rule](#) for the Regulations. This followed a letter from the Minister (please see the Annexe) where he offered to meet with the Committee to explain the rationale behind the necessity to breach this rule.

Meeting

3. The Committee will hear from the Minister and accompanying officials.

Clerks

Environment, Climate Change and Land Reform Committee

Annexe

**Letter from the Minister for Business, Innovation and Energy to the Convener
of the Environment, Climate Change and Land Reform Committee****The Electricity Works (Environmental Impact Assessment) (Scotland)
Amendment Regulations 2017**

The above amending instrument was made on 14 December 2017 by the Scottish Ministers under sections 2(2) of the European Communities Act 1972, and section 36C(2) of the Electricity Act 1989. It is being laid before the Scottish Parliament today, and comes into force on 18 December 2017. I attach a copy of the instrument for your information.

This instrument is required to amend the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations (SSI 2017/101). SSI 2017/101 was laid before Parliament on 31 March 2017 and came into force on 16 May 2017. The amendment clarifies the procedure for dealing with applications to vary consents under section 36 of the Electricity Act 1989, and updates references to “the Conservation of Habitats and Species Regulations 2010” which have been revoked.

Without these amendments, SSI 2017/101 as drafted requires variations to section 36 consents under the Electricity Act 1989 to go through a full EIA assessment process even where there are no additional adverse environmental effects from the variation, therefore going well beyond the requirements of Directive 2011/92/EU (the “EIA Directive”). This process places a significant regulatory burden on both the Scottish Government as the competent authority and consultation bodies. The amendment brings SSI 2017/101 into line with the EIA Directive.

SSI 2017/101 requires an EIA to be carried out for applications for “EIA development” (as defined in Regulation 2(1) of SSI 2017/101). Regulation 2(2) of the amending instrument updates the definition of EIA development to make it clear that a variation application relates to EIA development only if the proposed variation is likely to have significant effects on the environment. This adopts the approach taken within the EIA Directive, and it means that changes to developments which do not have significant effects on the environment are no longer brought within the EIA process.

The other amendments within the instrument update associated provisions within SSI 2017/101 to ensure that this updated approach is reflected throughout the entire instrument (particularly in Regulation 28 and Schedules 1 and 2 which needed to be amended to effect this updated approach).

In addition, Regulation 2(4) and (6)(g) update references in SSI 2017/101 following the replacement of the Conservation of Habitats and Species Regulations 2010 by the Conservation of Habitats and Species Regulations 2017”.

I want to make clear that I regret the necessity to breach the 28 day rule, which ordinarily gives time for the Committee to consider the instrument. I acknowledge this is far from ideal, and the decision has not been taken lightly, but I consider it

necessary to bring the instrument into force as soon as possible to unify the scope of the EIA process within the 2017 Regulations and the EIA Directive and have sought reassurance that this will not result in significant impacts on the environment. This change will reduce regulatory burden, and avoid potential additional delays to development of offshore wind development, and through doing so, it will allow the Scottish Government to support the unanimously approved greenhouse gas emission targets approved by the Scottish Parliament, as well as to deliver sustainable economic growth.

I would be pleased to meet with the Committee, at the earliest mutually convenient opportunity, to explain the rationale behind the necessity to breach the 28 day rule in these exceptional circumstances.

Paul Wheelhouse
Minister for Business, Innovation and Energy