



OFFICIAL REPORT
AITHISG OIFIGEIL

Environment, Climate Change and Land Reform Committee

Tuesday 27 February 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 27 February 2018

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
SUBORDINATE LEGISLATION.....	2
Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017 (SSI 2017/451).....	2

ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE
7th Meeting 2018, Session 5

CONVENER

*Graeme Dey (Angus South) (SNP)

DEPUTY CONVENER

*John Scott (Ayr) (Con)

COMMITTEE MEMBERS

- *Claudia Beamish (South Scotland) (Lab)
- *Donald Cameron (Highlands and Islands) (Con)
- *Finlay Carson (Galloway and West Dumfries) (Con)
- *Kate Forbes (Skye, Lochaber and Badenoch) (SNP)
- *Richard Lyle (Uddingston and Bellshill) (SNP)
- *Angus MacDonald (Falkirk East) (SNP)
- *Alex Rowley (Mid Scotland and Fife) (Lab)
- *Mark Ruskell (Mid Scotland and Fife) (Green)
- *Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Joanna Dingwall (Scottish Government)
Gayle Holland (Scottish Government)
Paul Wheelhouse (Minister for Business, Innovation and Energy)

CLERK TO THE COMMITTEE

Lynn Tullis

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Environment, Climate Change and Land Reform Committee

Tuesday 27 February 2018

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Graeme Dey): Good morning and welcome to the seventh meeting in 2018 of the Environment, Climate Change and Land Reform Committee. I remind everyone present to switch off mobile phones and other electronic devices, as they may affect the broadcasting system.

Agenda item 1 is for the committee to decide whether to take agenda items 3 and 4 in private. Do members agree to do so?

Members *indicated agreement.*

Subordinate Legislation

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

09:30

The Convener: Agenda item 2 is to take evidence on the reasoning for a breach in parliamentary procedure on the Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2017. I welcome the Minister for Business, Innovation and Energy, Paul Wheelhouse; Joanna Dingwall, who is a solicitor from the rural affairs division of the Scottish Government; and Gayle Holland, who is a compliance manager for Marine Scotland.

I offer the minister the opportunity to speak to the regulations.

The Minister for Business, Innovation and Energy (Paul Wheelhouse): Good morning, everyone, and thank you for the opportunity to speak to the regulations.

At the end of 2017, I became aware of an inconsistency between the Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the environmental impact assessment directive. That inconsistency required that applications for a section 36 variation with no additional significant environmental impact undertake a full EIA assessment, which went well beyond the requirements of the EIA directive.

The amendments that I lodged to the 2017 regulations at the end of last year apply only to applications for variations with no additional significant environmental impacts or effects—for example, a change only in turbine capacity in respect of the number of megawatts that a turbine can generate. It is important that we stress that all other variations require an EIA process. The amendment is not so that developers can bypass the EIA process.

It was necessary to amend the 2017 regulations urgently in order to bring them into line with the EIA directive and to minimise the unnecessary regulatory burden on ministers, stakeholders and developers. The amendments will help to ensure that further delays to offshore wind farm developments are avoided, without compromising our commitment to safeguarding the environment.

Where potential environmental impacts could result from offshore wind farms, several measures are in place to ensure environmental protection, including a full EIA process, wide-ranging consultation and stringent planning conditions. For example, approximately 50 consultation bodies

are consulted, and consultations range from 30 days to four months. Representations are also invited from members of the public.

Although the breach of the 28-day rule, which gives the committee time to consider the instrument, was not ideal—I regret having to do that—I felt that it was necessary in order to bring the 2017 EIA regulations into line with the EIA directive as soon as I was aware of the inconsistency in the legislation.

Now that we have identified the anomaly between the regulations and the EIA directive, and as part of our drive for continual improvements for efficiency and robustness, we will undertake a review of the regulations and the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 to ensure that they are consistent with each other, as they are both applied to the same sector.

I am happy to take questions.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a technical and context question. Under section 36 of the Electricity Act 1989, ministers have no legislative competence; they have just the administrative ability to give consents for generation over 50MW. Therefore, I take it that the only way in which the conflict can be sorted out is not by looking at the Electricity Act 1989, but by bringing the regulations together in one interpretation.

Paul Wheelhouse: I believe that that is the case, but I will check with my colleague, Joanna Dingwall, in case there is any misunderstanding. [*Interruption.*] You are correct in that assumption.

The Convener: I hope that I have picked this up correctly: you said that the only circumstances in which an EIA would not be required would be when there was a change to generating capacity.

Paul Wheelhouse: I might have misrepresented that point, so I am glad that you have picked it up. There might be a change in the technology that was deployed on a site that led to no environmental impact—the best example is that a turbine's power output being uprated, unless proved otherwise, might have no environmental impact. We would obviously put that change out to consultation, so, if there was a concern about an unanticipated impact on the environment of making a turbine more powerful, there would be an opportunity for stakeholders to raise that concern. If that was felt to be significant, the EIA process could be triggered.

Other technological changes that might be minor and have no impact on the environment at all would also be put out to consultation and stakeholders could raise any potential impacts. More significant changes, such as an increase in

the swept area of a turbine, the length of the blades or the height of the towers, could clearly have an environment impact on birds and other species. Changes to foundations or moorings could also have an impact. Those kinds of changes are more likely to require an EIA because of their significance, depending on the scale of change that is involved. We certainly do not believe that a change in a turbine's power output would have an environmental impact, but I did not mean to present that as the only example of where an EIA would not be required.

The Convener: That is what I am getting at. My understanding is that a significant change in a turbine's power capacity is normally linked to an increase in a turbine's size so, in reality, most circumstances would require an EIA.

Paul Wheelhouse: A change to the blades, a change to the cell—which is the cockpit of the turbine—a change to the height of the tower or something of that nature could change the environmental impact. We accept that, and developers tend to accept that as well. We are talking about a change purely to the guts of the turbine—its engine, which would perhaps be able to generate a higher power output from the same amount of wind. That would therefore increase the power of the capacity of the site.

That increase could arise for a number of reasons. There could be changes in the financial environment of both onshore and offshore wind farms that are necessary because of a reduced subsidy or because more powerful turbines are needed to be able to be competitive and win that subsidy. It could also be the case that technology has moved on and turbine manufacturers no longer make the less-efficient turbine units. Developers would have to use the available technology when replacing like with like, which could result in their generation capacity having a more powerful output. To date, we have not seen evidence that that would have an environmental impact, so that is likely to be something that would not require an EIA under the change that we have made.

Mark Ruskell (Mid Scotland and Fife) (Green): Further to that point, can you say a little bit more about the screening process? There is a determination of what is a significant environmental impact, which triggers an EIA. What happens before something is ruled out of a full EIA process?

Paul Wheelhouse: It would depend on whether we had an application for a variation. Assuming that a developer wishes to make such a variation and wants to perhaps change the turbine to deliver a more powerful output, stakeholders would be notified. I will just check with my colleagues on the length of time that stakeholders get.

Joanna Dingwall (Scottish Government): They get 28 days.

Paul Wheelhouse: Stakeholders get 28 days to respond and indicate whether they feel that there would be a material change that would have an environmental impact. Perhaps 50 bodies would be notified and have the ability to respond. If no such representation was made, or if stakeholders were content with the change, it could go forward without an EIA being triggered.

I will bring in Gayle Holland.

Gayle Holland (Scottish Government): If it was thought that a proposed change might have an environmental impact, it would go through a formal screening process at that stage, under the EIA regulations. At that time we would take views from a number of consultation bodies on whether they considered that the proposed change would cause environmental impacts. On the basis of that consultation, we would form a screening opinion, which would screen the proposed change into the EIA process if significant effects were identified or out of the process if they were not.

Mark Ruskell: Data is very important for understanding potential impact on species and also for informing the industry and other sectors. Does the change have any bearing on data collection and the requirements for data collection?

Paul Wheelhouse: No. If an environmental impact were identified, we would want the impact of the project on any species to be monitored, and that would not change simply because the turbine had changed. Projects that apply for a change of turbine might have an identified environmental impact that, through the process, has been deemed to be manageable or acceptable. However, the requirement for monitoring will not end simply because they have not had to go through an EIA for the change of turbine. I reassure Mr Ruskell that if environmental impacts have been identified, the requirements for the project to be monitored, carry out any mitigation or comply with planning conditions will still remain.

Claudia Beamish (South Scotland) (Lab): Is there any publicly available guidance, such as a list of what would be unlikely to have to go through the environmental impact assessment process? That might reassure stakeholders and those with an interest.

Paul Wheelhouse: I do not believe that any guidance has been published yet.

Gayle Holland: There is Scottish Government guidance in place, but it needs to be updated to incorporate the amendments to the regulations. The current guidance was published in 2015 and makes it clear that any application for a variation is

appropriate only if the proposals are not fundamentally different in terms of scale, character and environmental effects. That is the wider guidance, but it requires updating to include the changes brought about by the amendments, and that will be done in due course.

Paul Wheelhouse: There is nothing specific yet.

The Convener: Claudia Beamish makes a valid point. When that guidance is updated, it would be helpful if you were to write to the committee detailing the exact position.

Paul Wheelhouse: I am very happy to make that commitment. It is a sensible suggestion.

The Convener: Members have no further questions, but is there anything that you wish to add, minister?

Paul Wheelhouse: I want to emphasise that we are doing this reluctantly and in exceptional circumstances. I respect the 28-day rule and the reason for having it. I immediately offered to come before the committee because I was aware of the great importance of trying to maintain that discipline. I want to reassure the committee that the breach of the 28-day rule will not become the rule and is very much an exception.

The Convener: Thank you for your time, minister. At the committee's next meeting on 6 March, we will consider the Carbon Accounting Scheme (Scotland) Amendment Regulations 2018 (SSI 2018/40) and our work programme. The committee will also consider its approach to an inquiry on the marine environment and draft correspondence to the Equalities and Human Rights Committee.

09:43

Meeting continued in private until 12:45.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba