ENVIRONMENT, CLIMATE CHANGE AND LAND REFORM COMMITTEE

AGENDA

26th Meeting, 2018 (Session 5)

Tuesday 25 September 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 4, 5 and 6 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] from—

   Megan MacInnes, Adviser - Land, Global Witness;

   Dr Calum MacLeod, Policy Director, Community Land Scotland;

   Jason Rust, Legal Adviser, Scottish Land and Estates;

   John Sinclair, Property Law Committee and Property and Land Law Reform Sub-Committee, Law Society of Scotland;

   Ann Stewart, Commercial Real Estate Committee Member, Scottish Property Federation.

3. **European Union (Withdrawal) Act 2018:** The Committee will consider a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals: Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018 and The Justification Decision Powers (EU Exit) Regulations 2018, and will take evidence from—

   Charles Stewart Roper, Head of Radioactive Waste and Nuclear Decommissioning Policy Team, Scottish Government.
4. **Subordinate legislation:** The Committee will consider evidence heard on the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021 [draft] earlier in the meeting.


6. **Climate Change (Emissions Reduction Targets) (Scotland) Bill:** The Committee will consider written evidence received at Stage 1.

Lynn Tullis  
Clerk to the Environment, Climate Change and Land Reform Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5240  
Email: ecclr.committee@parliament.scot.

The papers for this meeting are as follows—

**Agenda item 2**

Register of Persons Holding a Controlled Interest in Land Regulations 2021  
ECCLR/S5/18/26/1

PRIVATE PAPER  
ECCLR/S5/18/26/2 (P)

**Agenda item 3**

Statutory Instrument Notification - cover note  
ECCLR/S5/18/26/3

PRIVATE PAPER  
ECCLR/S5/18/26/4 (P)

**Agenda item 6**

PRIVATE PAPER  
ECCLR/S5/18/26/5 (P)

PRIVATE PAPER  
ECCLR/S5/18/26/6 (P)

PRIVATE PAPER  
ECCLR/S5/18/26/7 (P)
Environment, Climate Change and Land Reform Committee

26th Meeting, 2018 (Session 5)

Tuesday 25 September 2018

Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) (Scotland) Regulations 2021

Introduction

The Committee agreed to take evidence on the proposed draft Regulations on the Register of Persons Holding a Controlled Interest in Land. The Committee will hear from a panel of stakeholders on 25 September:

- Megan MacInnes, Global Witness
- Calum Macleod, Community Land Scotland
- Jason Rust, Scottish Land and Estates
- John Sinclair, Law Society of Scotland
- Ann Stewart, Scottish Property Federation

Background

1. Section 39 of the Land Reform (Scotland) Act 2016 requires Scottish Ministers to make regulations requiring information to be provided about persons holding a controlled interest in owners and tenants of land, and for that information to be recorded in a public register, kept by the Keeper of the Registers of Scotland.

2. In September 2016, to inform the creation of the proposed draft Regulations, the Scottish Government published a consultation on Improving Transparency in Land Ownership in Scotland. An analysis of responses received is available here.

3. The proposed draft Regulations and a related Explanatory Note were laid in Parliament on 20 June. In its work programme discussion of 5 June the Committee agreed to consider the regulations, once laid.

4. The Scottish Government is currently carrying out a wider consultation on the draft regulations, with a closing date of 8 November 2018.

Enhanced Affirmative Procedure

5. The proposed Regulations are subject to an enhanced affirmative procedure. This requires a ‘pre-legislative scrutiny’ period, involving formal consultation on a draft, followed by approval by a vote in the Chamber of the Scottish Parliament.

6. The consultation period is 60 days (not including days when the Scottish Parliament is dissolved or in recess for a period of more than 4 days). This means that the deadline for responses is in early November 2018.
7. Section 41 of the Land Reform (Scotland) Act 2016 requires the Scottish Ministers, before laying a draft of the first regulations, to consult with the Keeper of the Registers of Scotland and ‘such other persons as they consider appropriate’.

8. The Scottish Government will lay the final proposed Regulations following conclusion of its consultation (anticipated 2019/20). The Committee will consider the proposed Regulations once laid and if they are passed by the Scottish Parliament, it is anticipated they will come into force on 1 April 2021.

Timetable

9. The Committee heard from Scottish Government officials on the regulations and considered its approach at its meeting on 26 June.

10. The Committee then agreed its timetable for consideration of the draft Regulations.

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 June 2018</td>
<td>Call for views issued</td>
</tr>
<tr>
<td>17 August 2018</td>
<td>Call for views closed</td>
</tr>
<tr>
<td>4 September 2018</td>
<td>Review of Evidence received</td>
</tr>
<tr>
<td>25 September 2018</td>
<td>Evidence Session with stakeholders</td>
</tr>
<tr>
<td>2 October 2018</td>
<td>Evidence Session with the Registers of Scotland</td>
</tr>
<tr>
<td>23 October 2018</td>
<td>Evidence Session with the Cabinet Secretary</td>
</tr>
<tr>
<td>30 October 2018</td>
<td>Consideration of Draft Report</td>
</tr>
<tr>
<td>6 November 2018</td>
<td>Consideration of Draft Report</td>
</tr>
</tbody>
</table>

Call for Views

11. The Committee hosted a call for views on the regulations from 29 June to 17 August 2018 and received a total of 12 responses:

- 001 Simon Brooke
- 002 Registers of Scotland
- 003 Shepherd and Wedderburn
- 004 Global Witness
- 005 Pinsent Masons
- 006 Gordon A Hay
- 007 Malcolm Combe
- 008 Community Land Scotland
- 009 Scottish Land and Estates
- 010 Scottish Property Federation
- 011 Andy Wightman MSP
- 012 Law Society of Scotland

Clerks/SPICe
Environment, Climate Change and Land Reform
Introduction

1. The Committee agreed to hear evidence from the Scottish Government on the ionising radiation Regulations and the related notification.

Background

2. The Cabinet Secretary for Government, Business and Constitutional Affairs wrote to the Conveners of the Finance and Constitution Committee and the Delegated Powers and Law Reform Committee on 11 September. This correspondence sets out the Scottish Government’s approach to contingency planning in the event of the UK exiting the EU without agreement on a deal.

3. The Cabinet Secretary advised that the necessary contingency planning will require a substantial number of instruments to be made containing changes to reserved and devolved law. Where the policy outcome being sought is consistent across administrations, the Scottish Government consider it could be appropriate and in Scotland’s interests to agree a UK-wide approach to statutory instruments (for example, to avoid duplication of effort, or where only technical or minor amendments are required). Where a different way of dealing with EU withdrawal, or a different policy outcome, is required in Scotland, the Scottish Government will pursue Scottish statutory instruments in the Scottish Parliament.

4. The correspondence also includes a protocol which sets out the shared understanding between the Scottish Government and the Scottish Parliament on the process for obtaining the approval of the Scottish Parliament to the Scottish Ministers’ consent to the exercise by UK Ministers of powers under the European Union (Withdrawal) Act 2018 (“the Act”) in relation to proposals within the legislative competence of the Scottish Parliament. 2. The protocol also sets out how proposals for UK Statutory Instruments (SIs) will be categorised. Detail of the protocol is also set out in Annexe A to this paper.

5. The Committee received notification from the Scottish Government on 18 September 2018 of its intent to consent to UK Ministers making regulations on its behalf in relation to:

- The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018
• The Justification of Practices Involving Ionising Radiation Regulations 2004

Reporting

6. The Committee has two options:
   a. Write to the Scottish Government to confirm it is content for consent for a
      UK SI to be given.
   b. Consider the matter further, take evidence if appropriate and make a
      report to parliament.

7. If it chooses to report it may make one of three recommendations that:
   a. it is content for consent to be given for a UK SI to be made in the UK
      Parliament only.
   b. it’s not content with the Scottish Government granting its consent and that
      the proposals should be made by an SSI; or
   c. it’s not content with the Scottish Government granting its consent and that
      the proposals should be included as a UK SI made under the joint
      procedure.

The Instrument

8. The notification letter is included in Annex B to this paper. It has been
categorised as A – minor or technical amendment. The notification is included at
Annexe C.

Recommendation

9. The Committee is asked to consider the instrument and determine whether
   it is content for the Scottish Government to give its consent for UK
   Ministers to lay a Statutory Instrument in the UK Parliament on this subject.

Clerks/SPICE
Environment, Climate Change and Land Reform Committee
Background to the protocol

10. The Scottish Parliament has power to legislate for matters within devolved competence (as defined in paragraphs 8 and 17 of Schedule 2 of the Act). However, where appropriate Scottish Ministers may consent to the UK exercising this power on Scotland’s behalf using a Statutory Instrument (SI).

11. Both the Scottish Parliament and the Scottish Government recognise that, as a matter of principle, the Scottish Parliament should have the opportunity to consider in advance whether it is content for the matter to be taken forward by a UK Statutory Instrument (SI) rather than a Scottish Statutory Instrument (SSI). This protocol is an agreement between the Scottish Parliament and the Scottish Government as the Act makes no provision for scrutiny by the Scottish Parliament.

Timing

12. The Scottish Parliament will normally have 28 days to consider the notification (not including any time in which the Parliament is dissolved or in recess for more than 14 days). The Scottish Government will seek to ensure that the UK Government is aware of Scottish Parliament recess periods and take them into account in its own legislative programming.

Categorisation

13. The protocol contains proposals for how to categorise the instruments. A, being minor or technical amendments and B being more significant policy decisions. C, covers matters which should be subject to the joint procedure (an SI laid in both the UK and Scottish Parliaments). Category C is included in the protocol for reference as it is an existing procedure which the Committee can choose to recommend while reporting. Further detail on what may constitute a category A or B instrument is contained in a letter from the Cabinet Secretary for Government Business and Constitutional Relations outlining this protocol. An illustrative list is included below:

Category A

- Minor and technical in detail;
- Ensuring continuity of law;
- Clear there is no significant policy decision for Ministers to make;
- Proposals necessary for continuity where there may be a minor policy change, but limited policy choice and an “obvious” policy answer;
- Proposals where Ministers have a policy choice but with limited implications, e.g. only one obvious policy option as to which body may provide an opinion or receive a report;
• Transfer of functions - providing for a function of an EU entity to be exercised by a public authority in the UK, where a choice as to whether that should be amended to be the Secretary of State for Scotland, Scottish Ministers or somebody else is consistent with the devolution settlement or replicates what happens in practice now;
• Updating references which are no longer appropriate once the UK has left the EU, such as provisions which refer to “member states other than the United Kingdom” or to “other EEA states”

Category B

• Proposals where a more significant policy decision is being made by Scottish Ministers.
• Proposals predominantly concerned with technical detail but which include some more significant provisions that may warrant subject committee scrutiny;
• Transfer of functions - providing for a function of an EU entity to be exercised by a public authority in the UK where there is a policy choice with significant implications about which public authority it should be e.g. a regulatory function exercisable by either SEPA or Scottish Water where Parliament may have an interest in the policy choice made by Scottish Ministers
• Replacement, abolition, or modification of certain EU functions that have significant implications e.g reporting (both receiving and making reports), monitoring, compliance and enforcement;
• Sub-delegation - creating or amending a power to legislate, for example transferring EU legislative powers to a UK public authority;
• Provision which materially increases or otherwise relates to a fee in respect of a function exercisable by a UK public authority. This could include changes to the group of bodies or individuals required to pay such fees;
• Provision which creates, or widens the scope of, a criminal offence, or which increases the penalty which may be imposed in respect of a criminal offence;
• Provision which involves a significant financial impact on individuals, business, public sector or the economy (this could be automatically elevated to category C if it met a particular financial threshold);
• Provision which creates, widens the scope of, or increases the level of fine for a fixed penalty.

14. The Scottish Government will have 7 days to respond to a Committee report. If the Scottish Government does not agree with the recommendation of the Committee then a Parliamentary Bureau motion will be laid in the Chamber. The debate on the motion should take place within 14 days of the expiry of the 28 day period. If the motion is agreed to it is anticipated that the Scottish Government should normally follow the Committee’s recommendations.

15. Finally, if a consent notification is agreed to, the Scottish Government will track the relevant UK SI and advise the Scottish Parliament:

   a. that the SI is consistent with the consent granted;
b. that the SI varies from the original proposals but not to the extent of needing additional parliamentary consent; or

c. that the SI varies significantly from the original proposals and that it is withdrawing consent (if such cases the Scottish Government will either use an SSI or the joint procedure).
18 September 2018

Dear Gillian,

IONISING RADIATION
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

This letter refers to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, Mike Russell wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the SIs which the UK Government propose to make in order to fix deficiencies in certain regulations that cover ionising radiation, and the reasons that I am content for Scottish devolved matters to be included in these SIs.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

ROSEANNA CUNNINGHAM
Ionising Radiation - The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018 and The Justification Decision Powers (EU Exit) Regulations 2018

Notification to the Scottish Parliament

Name of the instrument and summary of proposal

The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) (Amendment) (EU Exit) Regulations 2018 and The Justification Decision Powers (EU Exit) Regulations 2018 address minor and technical deficiencies arising from the withdrawal of Scotland as part of the United Kingdom from the European Union. The Regulations do not affect the scope of powers exercisable by UK and Scottish Ministers and respect the devolution settlement.

The regulations contain amendments to two existing sets of UK Regulations for Ionising Radiation that include devolved responsibilities:

- The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018
- The Justification of Practices Involving Ionising Radiation Regulations 2004

Explanation of law that the proposals amend

The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018 transpose certain elements of Council Directive 2013/59/Euratom, which lays down basic safety standards across the Community (the BSSD), and cover both reserved and devolved responsibilities.

The Justification of Practices Involving Ionising Radiation Regulations 2004 give the relevant UK and Scottish Ministers the power to approve new practices involving ionising radiation, across devolved and reserved responsibilities.

Summary of the proposals

This notification covers proposals to fix the following deficiencies:

The Ionising Radiation (Basic Safety Standards) (Miscellaneous Provisions) Regulations 2018 contain definitional references throughout which are derived from the Euratom Basic Safety Standards Directive 2013. Two of these references will no longer be operable post exit and will be corrected by amending the references to remove the deficiencies and to replace definitions by reference to the Directive, with the text of the definitions.

The Justification of Practices Involving Ionising Radiation Regulations 2004 draw upon the European Communities Act 1972 to give UK and Scottish Ministers power to make specific regulations to approve practices. Regulations to approve
practices are currently made under section 2(2) of the 1972 Act. The Justification Decision Powers (EU Exit) Regulations 2018 will create a new regulation making power for that purpose exercisable by UK and Scottish Ministers, and the 2004 Regulations will be updated to refer to that new power.

**Why is the change necessary?**

These changes are necessary to allow the continuation of the effective function of these regulations, which are key elements in the overall regulation of practices involving radioactive substances.

**Scottish Government categorisation of significance of proposals**

Category A. The provisions are making small, minor technical changes to preserve the functioning of the regulations.

**Impact on devolved areas**

There is no impact on devolved powers exercised under the regulations, or on future devolved discretion over future changes to the regulations.

**Stakeholder engagement/consultation**

We are in regular contact with all our stakeholders regarding the move towards leaving the EU. However, these measures are aimed solely at preserving the functioning of the regulations as it is at present and we have not undertaken any focussed engagement on this basis. We have not undertaken any formal consultation.

**Have Scottish Ministers had regard to the guiding principles on animal welfare and the environment?**

The guiding principles on the environment as set out in Article 191(2) in Title XX of the Treaty on the Functioning of the European Union are not relevant to these proposals. The two instruments being amended are part of the UK implementation of the Basis Safety Standards Directive which is made under the Treaty Establishing the European Atomic Energy Community, which does not include the Treaty Establishing the European Atomic Energy Community, which does not include the environmental principles.

However, the Basic Safety Standards Directive does require radiation protection legislation to be based on the principles of justification, optimisation and dose limitation which provide a similar function to the environmental principles in TFEU. As the provisions are making small, minor technical changes to preserve the functioning of the regulations, which adhere to the spirit of the underlying EU regime, Ministers are satisfied the proposals are sufficiently aligned with the radiation protection principles.

**Any other impact assessments?**
We have discussed with the UK Government and on the basis that this does not infer any policy changes, there is not a requirement to undertake an impact assessment.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

The provisions were made at the UK level to reflect overlapping reserved and devolved responsibilities, and it is most effective to make the changes to address deficiencies at the same level.

Intended laying date

Late October 2018

Does the Scottish Parliament have 28 days to scrutinise Scottish Minister’s proposal to consent?

Yes

Information about any time dependency associated with the proposal

As the provisions are making small, minor technical changes to preserve the functioning of the regulations, there is no time dependency associated with the proposals.

Any significant financial implications

As the provisions are making small, minor technical changes to preserve the functioning of the regulations, there are no significant financial implications associated with the proposals.