



## LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

### AGENDA

11th Meeting, 2019 (Session 5)

Wednesday 3 April 2019

The Committee will meet at 9.00 am in the James Clerk Maxwell Room (CR4).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 2).
3. **European Union (Withdrawal) Act 2018:** The Committee will consider whether the following instrument has been laid under the appropriate procedure—

The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80).
4. **Subordinate legislation:** The Committee will consider the following negative instrument—

The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80).
5. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

**Agenda item 3**

PRIVATE PAPER

LGC/S5/19/11/1  
(P)

**Agenda item 4**

Note by the Clerk

LGC/S5/19/11/2

**Agenda item 5**

PRIVATE PAPER

LGC/S5/19/11/3  
(P)

**Local Government and Communities Committee**

**11th Meeting, 2019 (Session 5), Wednesday 3 April 2019**

**Subordinate Legislation – EU exit**

**Note by the clerk**

**Introduction**

1. This paper supports the Committee’s consideration of the following Scottish statutory instrument, subject to negative procedure –
  - The Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80)
2. The Committee is invited to consider the statutory instrument and—
  - agree whether it is content that the parliamentary procedure given to the instrument by the Scottish Government is appropriate; and
  - then consider the policy of the instrument in the usual way.

**Background**

3. The purpose of the instrument is to make technical amendments to EU derived Town and Country Planning and Electricity Works legislation in the fields of environmental protection, town and country planning, electricity works, and hazardous substances to address deficiencies arising as a result of EU Exit. This instrument does not introduce any policy changes. The policy note is attached at **Annexe A**.
4. This is the first EU exit related statutory instrument the Local Government and Communities Committee has been invited to consider. There is no indication that the Committee will be expected to consider any further EU exit related statutory instruments at present.
5. An electronic copy of the instrument is available at:  
[http://www.legislation.gov.uk/ssi/2019/80/pdfs/ssi\\_20190080\\_en.pdf](http://www.legislation.gov.uk/ssi/2019/80/pdfs/ssi_20190080_en.pdf)
6. The SSI was laid on 7 March 2019 and the lead committee must report by 29 April 2019.
7. The Scottish Government has given the SSI the ‘low’ categorisation (further explanation of this term is explained below).
8. No motion to annul this instrument has been lodged.

## Consideration of EU exit SSIs

9. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, Scottish Statutory Instruments (SSIs) related to EU exit will be considered in the same way that 'domestic' SSIs are considered except that the lead committee has the opportunity, in advance of its policy consideration, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. This process is known as the sift.
10. A [protocol](#) has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the 2018 Act. The protocol sets out further information about the sifting process.
11. The protocol also sets out an approach which categorises SSIs – high, medium or low – to assist committees' prioritisation in terms of scrutiny and gives the Delegated Powers and Law Reform Committee (DPLRC) a role in highlighting to a lead committee those SSIs where it disagrees with the Scottish Government about the categorisation.
12. This paper supports the Committee's consideration of the sift at agenda item 3. The Committee will then be invited to consider the SSI in the usual way at agenda item 4.

### The sift

13. Scottish Ministers have discretion about whether instruments made under Schedule 2 of the 2018 Act should be subject to the affirmative or negative procedure, unless the instrument makes provision falling within one of the categories which requires the mandatory affirmative procedure to be used.
14. As set out above, the lead committee has the opportunity, in advance of its consideration, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. Thus, the lead committee can recommend that an instrument laid under the negative procedure should be revoked and laid as an affirmative instrument and vice versa. The protocol states this "enables committees to recommend a change where they consider that the matter is of such significance that it requires active Parliamentary approval (or conversely is not so significant that it requires Parliamentary time to be allocated to its approval)".
15. The DPLRC will also consider the parliamentary procedure allocated to the instrument and make a recommendation to the lead committee where it agrees the procedure should be changed.
16. SPICe and the Office of the Solicitor of the Scottish Parliament (OSSP) have provided advice to inform the Committee's consideration of the sift. This is set out in paper LGC/S5/19/11/1 (P).

17. Where a lead committee agrees with the parliamentary procedure, the instrument is thereafter considered in the same way as a 'domestic' SSI. Where a lead committee recommends the parliamentary procedure should be changed, it must report to the Parliament. The Scottish Government is expected to meet that recommendation as soon as possible. A change of procedure does not, however, affect the timetable for Parliamentary consideration and the SSI should be considered under the procedure recommended by the lead committee.

#### Delegated Powers and Law Reform Committee consideration

18. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

19. At its meeting on 26 March 2019, the DPLRC agreed that the instrument should be considered under the negative procedure and with the 'low' categorisation. At this meeting, the DPLRC also agreed to draw the Parliament's attention under reporting ground (h) as the form of regulations 5(10)(c), 5(14)(a)(i) and 6(11)(a)(i) could be clearer. As the drafting issues are minor, and corrective action is not urgent, the DPLRC Committee was content with the Scottish Government's assurance that it intends to bring forward an amending instrument. Further information is set out in the DPLRC's report<sup>1</sup>.

#### **For decision**

**20. The Committee is invited to agree whether it is content that the negative parliamentary procedure given to the instrument by the Scottish Government is appropriate (agenda item 3).**

#### **Policy consideration of the SSI**

21. The process for the policy consideration of an SSI related to EU exit following the sift is the same as for a 'domestic' SSI. As abovementioned, the Scottish Government has decided the negative parliamentary procedure is appropriate for this SSI. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament.

22. 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 by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

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<sup>1</sup> Delegated Powers and Law Reform Committee, 15<sup>th</sup> Report 2019 (Session 5), *Subordinate legislation considered by the Delegated Powers and Law Reform Committee on 26 March 2019*. Available at:

<https://sp-bpr-en-prod-cdnep.azureedge.net/published/DPLR/2019/3/26/Subordinate-legislation-considered-by-the-Delegated-Powers-and-Law-Reform-Committee-on-26-March-2019/DPLRS052019R15.pdf>

23. As outlined in the policy note at Annexe A, this instrument does not introduce any policy changes. The instrument makes technical amendments to EU derived Town and Country Planning and Electricity Works legislation to address deficiencies arising as a result of EU Exit.

**For decision**

**24. The Committee is asked to note the instrument or if it has anything to report to the Parliament in relation to it (agenda item 4).**

**POLICY NOTE****THE TOWN AND COUNTRY PLANNING AND ELECTRICITY WORKS  
(MISCELLANEOUS AMENDMENTS) (EU EXIT) (SCOTLAND) REGULATIONS  
2019 (SSI 2019/80)**

The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of Schedule 2 to the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

**Purpose of the instrument.** The Regulations make technical amendments to EU derived Town and Country Planning and Electricity Works legislation to address deficiencies arising as a result of EU Exit.

**Policy Objectives**

The Regulations make amendments to a number of pieces of secondary legislation relating to environmental impact assessments undertaken within the Town and Country Planning and Energy Consenting regimes. Amendments are also made in relation to land-use planning aspects of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances. The amendments make technical and minor changes relevant to retained EU law and are part of readiness preparations in the event that the UK exits the EU without a deal.

This instrument does not introduce any policy changes.

**Explanation of the law being amended by the regulations**

The Regulations will amend the following pieces of legislation:

- The Town and Country Planning (Development Planning) (Scotland) Regulations 2008
- The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013
- The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015
- The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
- The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

**Reasons for and effect of the proposed change or changes on retained EU law**

The Regulations correct deficiencies in Town and Country Planning legislation arising as a consequence of the United Kingdom's exit from the EU in a "no deal" scenario. The regulations also correct deficiencies in legislation concerning the environmental

impact of projects requiring regulatory approval under Sections 36 or 37 of the Electricity Act 1989.

The Town and Country Planning (Development Planning) (Scotland) Regulations 2008

The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015

The Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 ('the 2015 regulations') implement the land-use planning aspects of Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances ("Seveso III").

The Regulations make relevant amendments as required to the 2015 regulations in relation to definitions, references and expressions related to retained EU law. In particular, references to European Directives are adjusted to refer to retained EU law (which will include that which implemented those Directives). Related amendments are also made to relevant definitions, references and expressions used in The Town and Country Planning (Development Planning) (Scotland) Regulations 2008, and The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017

The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017 implemented the EIA Directive<sup>2</sup> in relation Town and Country Planning in Scotland. They impose procedural requirements in relation to the consideration of applications for planning permission under the Town and Country Planning (Scotland) Act 1997 ("The Act"), development by planning authorities and restrict the grant of permission by simplified planning zone schemes, enterprise zones and the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

All development in schedule 1 requires an environmental impact assessment (EIA). Development in Column 1 of the table in schedule 2 which is either to be carried out in a sensitive area or satisfies a threshold or criterion in Column 2 of that table ("Schedule 2 development") requires EIA if it is likely to have significant effects on the environment. Development which requires EIA is referred to in the Regulations as "EIA development".

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<sup>2</sup> Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 2014/52/EU.



The Regulations make relevant amendments as required in relation to definitions, references and expressions related to retained EU law. In particular, references to Member States and other EEA States are amended, and references to European Directives are adjusted to refer to retained EU law (which will include that which implemented those Directives).

### The Electricity Works (Environmental Impact Assessment) (Scotland) Regulations 2017

The Electricity Works Regulations implemented the EIA Directive in relation to regulatory approvals required before projects under Sections 36 or 37 of the Electricity Act 1989 may be taken forward in Scotland's environment (on land and in territorial waters).

The Electricity Works Regulations impose procedural requirements in relation to the consideration of applications for such regulatory approvals by the Scottish Ministers. All projects in schedule 1 require an environmental impact assessment (EIA). Projects in schedule 2 require an EIA if they are likely to have significant effects on the environment. Projects which require an EIA are referred to in the Regulations as "EIA Development".

The Regulations make relevant changes as required to amend the 2017 regulations in relation to certain definitions, references and expressions. In particular, references to Member States and other EEA States are amended, and references to European Directives are adjusted to refer to retained EU law (which will include that which implemented those Directives).

### **Statements required by European Union (Withdrawal) Act 2018**

#### **Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement "In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 do no more than is appropriate". This is the case because the changes are minor and technical in nature and are part of readiness preparations in the event that the UK exits the EU without a deal.

#### **Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement "In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action". This is the case because the changes are minor and technical in nature and are part of readiness preparations in the event that the UK exits the EU without a deal.

**Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement “In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”.

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010**

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement “In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

**Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare**

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement “In my view The Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 have had due regard to the guiding principles on the environment and animal welfare as derived from the equivalent principles provided for in Articles 13 and 191(2) in Titles II and XX respectively of the Treaty on the Functioning of the European Union.”.

**Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)**

The above heading is not applicable.

**An indication of how the regulations should be categorised in relation to the significance of the change proposed**

The regulations are considered to be minor and technical in nature, with no policy change therefore the significance of the change is categorised as ‘low’.

**Statement setting out the Scottish Ministers’ reasons for their choice of procedure**

The Minister for Local Government, Housing and Planning, Kevin Stewart, has made the following statement “The instrument is subject to the negative procedure. The amendments within the instrument are considered to be minor and technical in nature and amend Regulations which are all themselves made subject to the negative procedure.”.

## **Further information**

### **Consultation**

The amendments within the instrument are considered to be minor and technical in nature and are part of readiness preparations in the event that the UK exits the EU without a deal. Consultation on the content was, therefore, not considered necessary.

### **Impact Assessments**

Full impact assessments have not been prepared for this instrument because the changes are considered to be minor and technical in nature and are not intended to introduce any new requirements.

The amendments do not alter Scottish Government's current environmental policies and priorities and, therefore, do not have a significant impact on the environment. The impact on business, charities or voluntary bodies is expected to be minimal.

### **Financial Effects**

The Minister for Local Government, Housing and Planning, Kevin Stewart, confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Directorate for Local Government and Communities  
March 2019