RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

31st Meeting, 2019 (Session 5)

Wednesday 13 November 2019

The Committee will meet at 9.15 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private**: The Committee will decide whether to take items 4 and 5 in private.

2. **Proposed National Islands Plan**: The Committee will take evidence from—

   Paul Wheelhouse, Minister for Energy, Connectivity and the Islands, Erica Clarkson, Islands Lead, Heather Cowan, Head of Transport Strategy and European Funding, and Don Morrison, Island Policy Officer, Scottish Government.

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-


4. **Proposed National Islands Plan**: The Committee will review the evidence heard at today’s meeting.

5. **Agriculture (Retained EU Law and Data) (Scotland) Bill**: The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

6. **Pre-Budget/Financial scrutiny on roads maintenance in Scotland (in private)**: The Committee will consider a draft letter on its pre-budget/financial scrutiny on roads maintenance in Scotland.
The papers for this meeting are as follows—

**Agenda Item 2**

Cover note

PRIVATE PAPER

**Agenda Item 3**

UK SI cover note

**Agenda Item 5**

PRIVATE PAPER

**Agenda Item 6**

PRIVATE PAPER
Proposed National Islands Plan

Background

1. At this meeting, the Committee will take evidence from the Minister for Energy, Connectivity and the Islands on the proposed National Islands Plan, which was laid in Parliament on 3 October 2019. This is a component of the implementation of the Islands (Scotland) Act 2018, which the Committee considered at bill stage.

2. The Minister for Energy, Connectivity and the Islands made a statement in the Chamber to support the laying of the proposed Plan on 8 October 2019.

3. The contents of the Plan sets out 13 Strategic Objectives, which are as follows:

   • **Population Levels** - Strategic Objective 1: To address population decline and ensure a healthy, balanced population profile.

   • **Sustainable Economic Development** - Strategic Objective 2: To improve and promote sustainable economic development.

   • **Transport** - Strategic Objective 3: To improve transport services.

   • **Housing** – Strategic Objective 4: To improve housing on Scottish islands.

   • **Fuel Poverty** - Strategic Objective 5: To reduce the level of fuel poverty currently present on Scotland’s islands.

   • **Digital Connectivity** - Strategic Objective 6: To improve digital connectivity.

   • **Health, Social Care and Wellbeing** - Strategic Objective 7: To improve and promote health and wellbeing.

   • **Environmental Wellbeing and Biosecurity** - Strategic Objective 8: To improve and promote environmental wellbeing and deal with biosecurity.

   • **Climate Change and Energy** - Strategic Objective 9: To ensure that Scottish islands are at the forefront of contributions to our ambition to end climate change.

   • **Empowered Island Communities and Strong Local Partnership** - Strategic Objective 10: To empower diverse communities and different places.

   • **Arts, Culture and Language** - Strategic Objective 11: To support arts, culture and language.
• **Education** - Strategic Objective 12: To promote and improve education.

• **Implementation** - Strategic Objective 13: To support effective implementation of the National Islands Plan.

4. Due to a short statutory timetable to consider the proposed Plan, the Committee issued a call for evidence from 10 – 31 October 2019 which received 44 responses (as at 8 November 2019), these are available online.

Rural Economy and Connectivity Committee Clerks
November 2019
European Union (Withdrawal) Act 2018

Introduction
1. This paper supports the Committee’s consideration of a consent notification sent by the Scottish Government relating to the following UK statutory instrument (SI)—
   - The Harbour and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019

2. These regulations are being laid in relation to the European Union (Withdrawal) Act 2018. To assist the consideration of such instruments, a protocol has been put in place between the Scottish Government and Scottish Parliament. Further detail on this protocol is available in a letter from the Cabinet Secretary for Government Business and Constitutional Relations.

Reporting
3. Under the protocol referred to above, the Committee has the following two options following its consideration of the UK SIs—
   a) Write to the Scottish Government to confirm it is content for consent for a UK SI to be given; or
   b) Consider the matter further, take evidence if appropriate and make a report to parliament.

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

5. The Committee’s role in the protocol is to decide whether it agrees to the Scottish Government offering its consent to the UK Government to make regulations on its behalf. However, there are broader policy issues which may arise in future, not as a direct consequence of the notification, but due to Brexit itself. The Committee may wish to note these issues in its response to the Scottish Government and request that it be kept up to date on any
developments on these matters. These broader policy issues have been identified in relation to each instrument where appropriate.

**INSTRUMENTS**

6. This table is intended to give a brief overview only. The notification letters and documentation for the instruments are included in annexes to this paper.

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Category</th>
<th>Issues to note</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Harbour and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019 (see Appendix A)</td>
<td>A</td>
<td>None</td>
</tr>
</tbody>
</table>

The Harbour and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019

- Date notification received: 28 October 2019
- Deadline for consideration: 24 November 2019
- Categorisation: A
- Notification: set out in Appendix A.

7. The purpose of these Regulations is to ensure that, so far as harbours situated in England, Wales and Scotland, and major road schemes in England and Wales, are concerned the established statutory processes and procedures for undertaking environmental impact assessments will continue to work effectively after the UK leaves the European Union.

**Policy and legal issues**

8. No policy or legal issues have been identified.

**DECISION**

9. The Committee is asked to consider the consent notification referred to in this paper and determine whether it is content to write to the Scottish Government to confirm it is content for consent for the UK SI referred to in the notification to be given.

Committee clerks
November 2019
Name of the SI (if known) or a title describing the policy area:

The Harbour and Highways (Environmental Impact Assessment) (Amendment) (EU Exit) Regulations 2019 (the 2019 Regulations”)

Brief explanation of law that the proposals amend:

This instrument relates to relevant provisions in section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964, and in Part VA of the Highways Act 1980 which set out the Environmental Impact Assessment (EIA) process to be followed when considering relevant harbour schemes; and relevant major road schemes in England and Wales. This is to ensure proper consideration of potential environmental impact is factored into the decision making processes for such schemes.

The EIA process is set by EU Directive 2011/92/EU “on the assessment of the effects of certain public and private projects on the environment” (“the 2011 Directive”) subsequently substantially amended by Directive 2014/52/EU. It requires Member States to ensure that, before consent is given, projects likely to have significant effects on the environment undergo an assessment with regard to their effects. In the UK, the 2011 Directive was implemented, so far as harbours situated in England, Wales and Scotland, and major road schemes in England and Wales, are concerned, by amendments made to the Harbours Act 1964 and the Highways Act 1980. The relevant provisions are section 44 of, and Part 1 of Schedule 3 to, the Harbours Act 1964; and Part VA of the Highways Act 1980.

Summary of the proposals and how these correct deficiencies:

The purpose of these Regulations is to ensure that, so far as harbours situated in England, Wales and Scotland, and major road schemes in England and Wales, are concerned the established statutory processes and procedures for undertaking environmental impact assessments will continue to work effectively after the UK leaves the European Union.

This instrument will ensure that these provisions on environmental impact assessment in the Harbours Act 1964 continue to operate effectively once the UK leaves the EU. The modifications remove and replace language that binds UK environmental impact assessments to EU legislation and institutions in order that it reads correctly and remains coherent and clear.

The following changes are made:

- References to “member States” are amended to “Secretary of State”,
- References to “Union law” are amended to refer to “retained EU law”,
- References to European Economic Area (EEA) states that assume that the UK is a member of the EEA are amended to reflect that the UK is not a member of the EEA,

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
• Definitions which relied on cross references to the Directive, e.g. definition of “environmental organisation”, are amended to be free-standing by removing reliance on cross references to the Directive.

The changes to the Harbours Act 1964 are within the competence of the Scottish Parliament whereas the changes to the Highways Act 1980 only relate to areas reserved to Westminster.

An explanation of why the change is considered necessary:

These changes are considered necessary as provisions in the existing legislation are drafted from the perspective of the UK being an EU Member State. Upon the UK exiting the EU the wording which reflects the UK being a Member State becomes deficient it is therefore being changed to ensure the legislation continues to operate correctly.

Scottish Government categorisation of significance of proposals:

Category A – The SI makes only minor technical changes to the Harbours Act 1964 which seek to maintain the status quo.

Impact on devolved areas:

As the 2019 Regulations seek only to make technical changes to ensure the legislation continues to function as intended it is not thought that there will be any impacts on the devolved areas in scope.

Summary of stakeholder engagement/consultation:

No formal stakeholder consultation has been undertaken by UK Government due as the 2019 Regulations maintain the status quo and are not expected to have no adverse effect on harbours or roads.

A note of other impact assessments, (if available):

The UK government has not undertaken an impact assessment on the basis that no significant impact is foreseen on businesses, charities, the public sector or voluntary bodies.

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

The amendments sought by the 2019 Regulations are thought to be reasonable and will have little to no practical impact on the operation of Harbours in Scotland.
It is therefore a proportionate and sensible use of parliamentary time to allow the amendments to be made on a UK-wide basis.

If the Scottish Parliament will not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?:

The Scottish Parliament will have 28 days to scrutinise the proposal to consent. The UK Government plan to lay this SI for sifting on 28 November 2019.

Information about any time dependency associated with the proposal:

N/A

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

N/A

Any significant financial implications:

There are no significant financial implications.