

**Case Name: Energiekontor UK Limited against (1)The Advocate General for Scotland and (3) CWL Energy**

Case Ref No: **P1176/19**

Dates of Hearing: 7 April 2021

Division: First

Agents: Wright Johnstone and McKenzie (Respondent and Petitioner); CMS Cameron McKenna Nabarro Olswang LLP (Reclaimer and Third Respondent); Morton Fraser (First Respondent Respondent)

First Instance Decision: <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csoh37.pdf?sfvrsn=0> (April 2020 decision); <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020csoh107.pdf?sfvrsn=0> (December 2020 decision)

**Case Description**

This reclaiming motion challenges two interlocutors of the Lord Ordinary, dated 17 April 2020 (the first interlocutor) and 23 December 2020 (the second interlocutor). It is brought by the third respondents. The first respondent makes no motion relative to the reclaiming motion.

The petitioner is a developer of commercial wind farms. The first respondent represents the Ministry of Defence. The third respondent is another developer of commercial wind farms who has entered the petition process as an interested party. This case has a somewhat complex factual background which is set out in full in the decisions above. In short, the dispute between the parties centred on the policy of the first respondent relative to allocation of 'noise budget' to proposed wind farm developments within the consultation zone around the Eskdalemuir Seismic Array. By the first interlocutor, the Lord Ordinary extended the time period under Section 27A of the Court of Session Act 1988 and, being satisfied that the test in Section 27B(2) of the 1988 Act was met, granted permission for the petition to proceed. By the second interlocutor, the Lord Ordinary declared that the policy of the first respondent was unreasonable, *ultra vires* and unlawful, and reduced a decision of the first respondent dated 11 January 2018 along with a 'waiting list' relating to the noise budget.

The reclaimer advances the following grounds of appeal:

- First, insofar as the first interlocutor, it was submitted that the Lord Ordinary erred in exercising his discretion in terms of section 27A(1)(b) of the Court of Session Act 1988;

- Second, insofar as the second interlocutor, he erred in allowing the petitioner to amend the remedy sought;
- Third, again in relation to the second interlocutor, he erred in granting a remedy that was discriminatory, and failed to provide reasons for doing so and;
- Fourth, he erred in his application of *Anderson Strathern LLP v Scottish Legal Complaints Commission* 2017 SC 120 .

\*This is a virtual hearing. Further details are available on the Scottish Courts and Tribunals Service website.