

EXECUTIVE NOTE

THE INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) ACT 2010 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISION) ORDER 2011

SSI 2011/17 (C. 3)

The above instrument has been made in exercise of the powers conferred by sections 56 and 58(3) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”). At present there is no legal requirement for an instrument of this type to be laid before the Parliament. However, the Government considers it to be helpful to clarify its policy in relation to the commencement of the 2010 Act and to document the associated sequence of events, including the revocation of the original commencement order (SSI 2011/4). In future, as a consequence of the new arrangements brought into effect as a consequence of this instrument, commencement orders will be formally laid before the Parliament.

Policy Objectives

The Government made the Interpretation and Legislative Reform (Scotland) Act 2010 (Commencement) Order 2011 (S.S.I. 2011/4) on 12th January 2011. The principal purpose of that instrument was to commence, on 6th April 2011, Parts 2, 4, 5 and, insofar as not already in force, Part 6 of the 2010 Act. The 2010 Act’s other provisions came into force on 4th June 2010.

A copy of the order was provided to the Parliament on courtesy basis, in line with normal practice. Parliamentary officials subsequently alerted the Government to a potential weakness in the order in relation to arrangements for the publication of a small number of transitional instruments to be made under the 2010 Act in advance of full commencement of the new regime on 6th April 2010. Specifically, it was noted that the effect of the order as drafted would be to ensure that these instruments would fall within the definition of Scottish Statutory Instrument created by the 2010 Act. As such they would not be subject to existing publication arrangements, but neither would the publication arrangements under the new regime have taken effect. As a consequence, the publication of the transitional instruments would require to be undertaken on an informal rather than a statutory basis. Only instruments made under the 2010 Act in advance of 6th April were affected. All other instruments would continue to be dealt with under the terms of the *Scotland Act 1998 (Transitory and Transitional Provisions)(Statutory Instruments) Order 1999* (SI 1999/1096).

The Government agrees with the view that it would be preferable for there to be formal provision to ensure that the existing publication regime is applied to instruments to be made under the 2010 Act prior to 6th April 2011. It has therefore revoked the original commencement order and replaced it with a new instrument (*the Interpretation and Legislative Reform (Scotland) Act 2010 (Commencement No. 2 and Transitional Provision) Order 2011*) which incorporates the necessary transitional provision (at paragraph 5).

Commencement Policy

Part 2 of the 2010 Act makes provision about the Scottish Parliament's scrutiny of Scottish statutory instruments and statutory instruments. Part 4 sets out the scrutiny procedures applicable to subordinate legislation that is subject to special parliamentary procedure in the Scottish Parliament. Part 5 defines what is required where legislation provides for a document (other than a Scottish statutory instrument or a statutory instrument) to be laid before the Scottish Parliament. These matters were previously governed by the transitional orders (S.I. 1999/1096 and S.I. 1999/1593). As the 2010 Act will deal with those matters from 6th April 2011 onwards, the transitional orders will be revoked on 6 April 2011 by Part 6 of the 2010 Act.

The 6th April 2011 commencement date, falling shortly after the dissolution of the Parliament on 22nd March 2011, was chosen as a point offering the smoothest possible transition from the current regime to the 2010 Act's regime, with least risk of disruption to the management of business by the Government and the Parliament. The dissolution period provides a natural - and clearly defined - break in normal legislative activity..

The instrument also provides for certain provisions of the 2010 Act to come into force on 26th January 2011, but only in respect of instruments made under the 2010 Act. This is necessary to enable a small number of further instruments to be made under the 2010 Act before, and be brought into force on, 6th April 2011. In particular, section 27 of the 2010 Act needs to apply to the instruments to be made under the Act before 6th April 2011 so that they will be classified as Scottish statutory instruments. Further, the definition of the negative procedure in section 28 of the 2010 Act and the definition of the affirmative procedure in section 29 of the 2010 Act require to be applied to those instruments.

Consultation

On 21st September 2010 the Government launched a consultation exercise on the commencement of the remainder of the 2010 Act. The consultation paper proposed that Parts 2, 4, 5 and the provisions of Part 6 not already in force would be brought into force on 6th April 2011.

Only one respondent commented on the suitability of the commencement date. The respondent suggested that it would be preferable for Part 2 to be commenced during the dissolution period. This suggestion proceeded from a misapprehension about the actual date of dissolution. The commencement date 6th April 2011 was chosen because it does fall during the dissolution period.

The Government has worked closely with the Parliament and the Queen's Printer for Scotland (as primary stakeholders) in determining its strategy for commencement of the 2010 Act. The commencement date of 6th April 2011 arose in consequence of those dialogues.

Impact Assessments

The matters dealt with by the 2010 Act are of a highly technical nature. Parts 2, 4, 5, and the provisions of Part 6 not already commenced, impact principally on the internal functions of the Parliament and of the Queen's Printer for Scotland.

The only provisions being commenced that have any direct impact on the wider public are matters around the publication and printing of Scottish statutory instruments by the Queen's Printer. As explained at paragraphs 18 and 19 of the Government's consultation paper, none of the legislative reforms will disturb the existing practices which ensure that legislation is accessible to the public.

The commencement order does not in itself have an impact. It merely sets the date for the commencement of the remainder of the 2010 Act and enables a small number of implementing instruments to be made in advance of 6th April 2010.

Financial Effects

The instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
19 January 2011