

## **EXECUTIVE NOTE**

### **THE INTERPRETATION AND LEGISLATIVE REFORM (SCOTLAND) ACT 2010 (SAVINGS AND TRANSITIONAL PROVISIONS) ORDER 2011**

#### **SSI 2011/88**

The Interpretation and Legislative Reform (Scotland) Act 2010 (Savings and Transitional Provisions) Order 2011 (“the Order”) is made in exercise of the powers conferred by section 57(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”). By virtue of section 57(5) of the 2010 Act the Order is subject to the negative procedure as defined by section 28 of that Act.

#### **Policy Objectives**

##### Overview

Commencement of Parts 2, 4 and 5 and, in Part 6, section 55(3) of the 2010 Act on 6th April 2011, and the coming into force that same day of the Scottish Statutory Instruments Regulations 2011 (“the SSI Regulations”), introduces a new statutory framework for the scrutiny and publication of Scottish statutory instruments (“SSIs”).

The Government considers it necessary and expedient to make transitional and saving provision to ensure a smooth migration from the old frameworks to the new. Broadly the intention is to ensure that subordinate legislation that began to be scrutinised by the Parliament before 6th April 2011 remains subject to the scrutiny regime that applied when the Parliament first began to scrutinise it. The Government further considers it necessary and expedient to make provision to ensure a smooth transition from the publication regime for SSIs under the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (“the SI Transitional Order”) to the new publication regime under the SSI Regulations.

##### Article 3 - Orders subject to special parliamentary procedure

Provision about orders subject to special parliamentary procedure in the Scottish Parliament has, since devolution, been made by the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999. That Order ceases to have effect on 6th April 2011, from which date provision about orders subject to special parliamentary procedure will instead be made by Part 4 of the 2010 Act. Article 3 of the Order ensures that if notice of an order subject to special parliamentary procedure was given before 6th April 2011, that order will remain subject to the 1999 Order rather than Part 4 of the 2010 Act.

##### Article 4 - Provision for certain statutory instruments made, or laid before the Scottish Parliament, before 6th April 2011

The SI Transitional Order defined SSIs as a subcategory of statutory instruments within the meaning of the Statutory Instruments Act 1946 (a link that is broken by the new definition of SSI in section 27 of the Act). Article 4 relates to those statutory instruments (and drafts of such instruments) that are not SSIs but are nevertheless

subject to scrutiny by the Scottish Parliament. Certain orders made under the Scotland Act 1998 are a prominent example of this type of statutory instrument.

Provision in relation to the Scottish Parliament's scrutiny of those statutory instruments and draft statutory instruments was made by the SI Transitional Order. From 6th April 2011, provision will instead be made by Part 2 of the 2010 Act, which is applied to statutory instruments and draft statutory instruments by schedule 4 to the 2010 Act. Article 4 of the Order provides that if a statutory instrument was made, or a draft of such an instrument laid before the Parliament, before 6th April 2011 the SI Transitional Order is to continue to apply in relation to it rather than Part 2 of the 2010 Act.

#### Article 5 - Disapplication of section 30 of, and schedule 3 to, the Act

With limited exceptions, section 30 of the 2010 Act requires every SSI that is not subject to the negative or affirmative procedure to be laid before the Parliament after being made. That requirement could apply to SSIs made before 6th April 2011 that contain subordinate legislation which was properly scrutinised by the Parliament according to the regime that applied at the time its parliamentary scrutiny began. For instance, a draft SSI may have been considered by the Parliament before 6th April 2011. If the SSI is made on 6th April after the draft has been approved by the Parliament, it should not need to be laid before the Parliament under section 30. Accordingly, article 5 of the Order disapplies section 30 of the Act in relation to SSIs made, or laid before the Parliament in draft, before 6th April 2011. Similarly, article 5 disapplies schedule 3 to the Act in relation to such SSIs. Schedule 3 to the Act modifies the parliamentary scrutiny procedures specified in enactments passed or made before 6th April 2011 to convert references to certain parliamentary procedures to one of the three procedures that Part 2 of the Act provides for (i.e. the negative procedure, the affirmative procedure, or no procedure apart from laying under section 30).

#### Article 6 – Continuing effect of the SI Transitional Order

Article 6(1) of the Order provides for the SI Transitional Order to continue to have effect in relation to SSIs made before 6th April 2011 (“pre-commencement instruments”). However paragraphs (1) and (2) of article 8 of the SI Transitional Order are excepted from the provisions kept in force. Paragraph (1) required the Queen’s Printer for Scotland (“the QPS”) to publish lists of SSIs known as Scottish Statutory Instruments Issue Lists. From 6th April 2011 that obligation will arise from regulation 8 of the SSI Regulations and therefore article 8(1) of the SI Transitional Order need not be kept in force. Article 8(2) of the SI Transitional Order made provision in relation to the evidential status of Scottish Statutory Instruments Issue Lists. From 6th April 2011 regulation 10 of the SSI Regulations will make provision in relation to the evidential status of Scottish Statutory Instruments Issue Lists and therefore article 8(2) of the SI Transitional Order need not be kept in force.

Article 6(2) of the Order restricts the continued effect of article 9 of the SI Transitional Order to calendar years before 2011. For calendar years before 2011 annual editions will therefore continue to be prepared according to article 9 of the SI

Transitional Order. From calendar year 2011 onwards, annual editions will instead be prepared under regulation 9 of the SSI Regulations.

Notably, article 2 provides that the expression pre-commencement instrument, from article 6 onwards, includes certain resolutions of the Parliament. The resolutions referred to are resolutions which, by virtue of the Act they are passed under, are to be treated as if they were SSIs for publication purposes. The effect of article 2 is to ensure that the SI Transitional Order and the SSI Regulations apply in relation to those resolutions as they apply to SSIs.

#### Articles 7 to 11 – Application of the SSI Regulations to pre-commencement instruments, etc.

Articles 7 to 11 apply the SSI Regulations to pre-commencement instruments and other documents prepared under the SI Transitional Order with certain modifications. Its effect on each of the regulations is as follows.

Regulation 4 of the SSI Regulations makes provision about how SSIs may be cited in legislation. Article 7(1) ensures that pre-commencement instruments may be cited in accordance with regulation 4. One mode of citing SSIs permitted by regulation 4 is by reference to the number assigned to it by the QPS under regulation 3. Pre-commencement instruments will not have been numbered under regulation 3, but rather under the SI Transitional Order. Article 7(2) therefore provides that the number assigned under the SI Transitional Order is to be treated as having been assigned under regulation 3.

Regulation 8 of the SSI Regulations requires the QPS, periodically, to publish Scottish Statutory Instruments Issue Lists. In relation to each instrument listed, the instrument's number and date of first publication on the QPS website is to be given. Paragraphs (1) to (3) of article 7 ensure that the appropriate information is recorded in the case of any pre-commencement instruments included on a list published under regulation 8.

Regulation 9 of the SSI Regulations requires the QPS to publish an annual edition containing information about all the SSIs made in the calendar year to which it relates. As mentioned, article 6 keeps the SI Transitional Order in force so that annual editions relating to calendar years before 2011 will be prepared under its provisions rather than under regulation 9. Thus the first annual edition to be prepared under regulation 9 will be the annual edition for calendar year 2011. Article 7(1) ensures that it will include information about pre-commencement instruments made in calendar year 2011. An annual edition prepared under regulation 9 is to include a copy of every SSI printed under regulation 7. Article 7(4) adapts that reference so that in the case of pre-commencement instruments it relates to those pre-commencement instruments that were printed under article 7 of the SI Transitional Order. This ensures that the annual edition for calendar year 2011 will not include copies of instruments classified as local in terms of the SI Transitional Order as copies of such instruments would not be included in an annual edition prepared under the SI Transitional Order. Annual editions prepared under the SI Transitional Order include a list of all the instruments classified as local in that year. Under the new publishing regime established by the SSI Regulations instruments will no longer be classified as local.

Accordingly, regulation 9 does not contain an equivalent requirement to have a list of local instruments. Pre-commencement instruments made in calendar year 2011 may have been classified as local though, and therefore article 10 makes provision for a list of local instruments to be included in the annual edition for calendar year 2011 only.

Regulation 10 of the SSI Regulations gives presumptive evidential validity to SSI Lists and annual editions printed by the QPS and provides that the entries in Scottish Statutory Instruments Issue Lists and annual editions are to be treated as conclusive evidence of the date on which SSIs were first published by the QPS. Articles 7(1), 8 and 11 provide for regulation 10 to have the same effect in relation to pre-commencement instruments so that lists and annual editions prepared under the SI Transitional Order are accorded the same presumptive evidential validity.

Regulation 12 of the SSI Regulations makes provision about the printing and sale of SSIs, Scottish Statutory Instruments Issue Lists and annual editions by the QPS. Articles 7(1), 8 and 9 apply regulation 12 to pre-commencement instruments and lists and annual editions prepared under the SI Transitional Order so that they are to be printed and sold on the same basis as SSIs and lists and annual editions prepared under the SSI Regulations.

#### Article 12 – numbering of SSIs

Regulation 3 of the SSI Regulations provides for the QPS to assign numbers to SSIs in each calendar year starting with the number 1. In calendar year 2011 pre-commencement instruments will have been assigned numbers under the SI Transitional Order before regulation 3 comes into force. Article 12 ensures that the numbering of SSIs under regulation 3 follows on consecutively from the numbering of pre-commencement instruments under the SSI Regulations.

### **Consultation**

On 21st September 2010 the Government launched a consultation exercise on the implementation of the remainder of the 2010 Act. Paragraphs 39 to 47 of the consultation paper dealt with the question of what savings and transitional provision would be required in consequence of the commencement of Part 2 of the 2010 Act.

Respondents to the consultation did offer some comment on a draft of the order that accompanied the consultation paper. The detail of the Government's response to those comments is set out in the Government's formal response to the consultation. The general thrust of the comments centred on the complexity of the draft order. Having reflected on those comments, the Order that has been made departs from the consultation draft to make its purpose and effect clearer.

### **Impact Assessments**

The matters dealt with by the Order are of a highly technical nature. The Order will impact principally upon the Government, Parliament and the QPS. As explained above, the general purpose of the Order is to minimise any scope for disruption and confusion leaving all parties clear on their statutory role and responsibilities throughout the transitional period.

Provisions in the Order are concerned with the publication and printing of SSIs and might therefore be considered to have a direct impact on the wider public. However, the Order essentially has the effect of either continuing the SI Transitional Order in force or else applies the SSI Regulations with necessary modifications. The publishing framework delivered by the 2010 Act and the SSI Regulations serves to reinforce and enhance the accessibility of legislation to the public. As such, the provision does not result in any negative impact on the existing publication practices.

### **Financial Effects**

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

Scottish Government  
10 February 2011