

Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
LICENSING (MARINE)
ELECTRICITY
ENVIRONMENTAL PROTECTION**

The Regulatory Reform (Scotland) Act 2014
(Consequential Modifications) Order 2015

<i>Made</i>	- - - -	2015
<i>Coming into force</i>	- -	2015

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3), (4) and (5) of the Scotland Act 1998⁽¹⁾.

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act, a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 and comes into force on the day after the day on which it is made.

(2) Subject to paragraph (3), the modifications in this Order have the same extent as the provisions being modified.

(3) Articles 2, 5(3) and 6(4) extend to Scotland only.

Modification of the Health and Safety at Work etc. Act 1974

2.—(1) The Health and Safety at Work etc. Act 1974⁽²⁾ is amended as follows.

(1) 1998 c.46.
(2) 1974 c.37.

- (2) In section 1, subsection (1)(d) and the word “and” preceding it are repealed.
- (3) Section 5 is repealed.

Modification of the Copyright, Designs and Patents Act 1988

- 3.—(1) The Copyright, Designs and Patents Act 1988(3) is modified as follows.
 - (2) In section 47(6), in the definition of “statutory requirement”, the reference to an enactment includes any enactment contained in Part 3 of the Regulatory Reform (Scotland) Act 2014(4).
 - (3) In section 50(1), the reference to an Act of Parliament includes Part 3 of the Regulatory Reform (Scotland) Act 2014.
 - (4) Nothing in this article is to be construed as excluding any defence of statutory authority otherwise available under or by virtue of any statutory provision.

Modification of the Electricity Act 1989

- 4.—(1) The Electricity Act 1989(5) is amended in accordance with paragraphs (2) and (3).
- (2) After section 36C(6) insert—

“36D Proceedings for questioning certain decisions under section 36

- (1) If a person is aggrieved by a decision of the Scottish Ministers to which this section applies, and wishes to question the validity of the decision on either of the grounds mentioned in subsection (2), the person (the “aggrieved person”) may make an application to the Inner House of the Court of Session under this section.
 - (2) The grounds are that—
 - (a) the decision is not within the powers of the Scottish Ministers under this Part,
 - (b) one or more of the relevant requirements have not been complied with in relation to the decision.
 - (3) This section applies to a decision under section 36 in relation to an application for consent to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters.
 - (4) An application under this section must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.
 - (5) On an application under this section, the Inner House of the Court of Session—
 - (a) may suspend the decision until the final determination of the proceedings,
 - (b) may quash the decision either in whole or in part if satisfied that—
 - (i) the decision in question is not within the powers of the Scottish Ministers under this Part, or
 - (ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.
 - (6) In this section—

(3) 1988 c.48.

(4) 2014 asp 3.

(5) 1989 c.29.

(6) Section 36C was inserted by the Growth and Infrastructure Act 2013 (c.27), section 20(2).

“relevant waters” has the same meaning as in section 36A(7)(7);

“the relevant requirements”, in relation to a decision to which this section applies, means the requirements of this Act, or of any order or regulations made under this Part, which are applicable to that decision.

36E Applications under section 36D: requirement for permission

(1) No proceedings may be taken in respect of an application under section 36D(1) unless the Inner House of the Court of Session has granted permission for the application to proceed.

(2) The Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—

(a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and

(b) the application has a real prospect of success.

(3) The Court may grant permission under subsection (1) for an application to proceed—

(a) subject to such conditions as the Court thinks fit, or

(b) only on such of the grounds specified in the application as the Court thinks fit.”.

(3) In Schedule 8, after paragraph 5A(8) insert—

“5B Proceedings for questioning certain decisions under paragraph 3(2)

(1) If a person is aggrieved by a decision of the Scottish Ministers to which this paragraph applies, and wishes to question the validity of the decision on either of the grounds mentioned in sub-paragraph (2), the person (the “aggrieved person”) may make an application to the Inner House of the Court of Session under this paragraph.

(2) The grounds are that—

(a) the decision is not within the powers of the Scottish Ministers under this Schedule,

(b) one or more of the relevant requirements have not been complied with in relation to the decision.

(3) This paragraph applies to a decision under paragraph 3(2) as to whether a public inquiry should be held with respect to an application for consent to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters.

(4) An application under this paragraph must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.

(5) On an application under this section, the Inner House of the Court of Session—

(a) may suspend the decision until the final determination of the proceedings,

(b) may quash the decision either in whole or in part if satisfied that—

(i) the decision in question is not within the powers of the Scottish Ministers under this Schedule, or

(ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.

(7) Section 36A was inserted by the Energy Act 2004 (c.20), section 99(1), and amended by the Marine and Coastal Access Act 2009 (c.23), section 12(7)(b).

(8) Paragraph 5A was inserted by the Energy Act 2004 (c.20), section 182(1).

(6) In this paragraph—

“relevant waters” has the same meaning as in section 36A(7);

“the relevant requirements”, in relation to a decision to which this paragraph applies, means the requirements of this Act, or of any regulations made under this Schedule, which are applicable to that decision.

5C Applications under paragraph 5B: requirement for permission

(1) No proceedings may be taken in respect of an application under paragraph 5B unless the Inner House of the Court of Session has granted permission for the application to proceed.

(2) The Court may grant permission under sub-paragraph (1) for an application to proceed only if it is satisfied that—

(a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and

(b) the application has a real prospect of success.

(3) The Court may grant permission under subsection (1) for an application to proceed—

(a) subject to such conditions as the Court thinks fit, or

(b) only on such of the grounds specified in the application as the Court thinks fit.”

(4) Section 36D of, and paragraph 5B of Schedule 8 to, the Electricity Act 1989 do not apply in relation to a decision made before the coming into force of this Order.

Modification of the Environmental Protection Act 1990

5.—(1) The Environmental Protection Act 1990(9) is amended as follows.

(2) In Schedule 15, paragraph 14 is repealed.

(3) In Schedule 16, in Part 1, the entry relating to [1974 c.37](#) (Health and Safety at Work etc. Act 1974) is repealed.

Modification of the Environment Act 1995

6.—(1) The Environment Act 1995(10) is amended as follows.

(2) In section 21(11)—

(a) in subsection (1), paragraph (g) is repealed; and

(b) in subsection (2), paragraph (a) is repealed.

(3) In section 108(12), in subsection (15), in the definition of “pollution control functions” as it applies to the Agency, the Natural Resources Body for Wales or SEPA, paragraph (d) is repealed.

(4) In Schedule 22, in paragraph 30, sub-paragraphs (2), (3), (4), (5) and (8) are repealed.

Modification of the Income Tax (Trading and Other Income) Act 2005

7.—(1) The Income Tax (Trading and Other Income) Act 2005(13) is amended as follows.

(9) [1990 c.43](#).

(10) [1995 c.25](#).

(11) Section 21 was amended by paragraph 1 of Schedule 1 to the Statute Law (Repeals) Act 2004 ([c.14](#)), and by paragraph 29 of schedule 3 to the Regulatory Reform (Scotland) Act 2014 ([asp 3](#)) (the “2014 Act”).

(12) Section 108 was amended by section 46 of, and paragraphs 5 and 43 of schedule 3 to, the 2014 Act, and by [S.S.I. 2006/181](#) and [S.S.I. 2000/323](#); there are other amendments but none is relevant.

(13) [2005 c.5](#).

(2) In section 167, in subsection (1)(c), for the words after “or” to the end of that paragraph substitute “a permit or authorisation under any corresponding provision for the time being in force in Northern Ireland or Scotland”.

Modification of the Corporation Tax Act 2009

8.—(1) The Corporation Tax Act 2009(**14**) is amended as follows.

(2) In section 144, in subsection (1)(c)—

- (a) after “permit” insert “or authorisation”;
- (b) omit the “or” after sub-paragraph (i); and
- (c) after sub-paragraph (ii) insert—

“or

(iii) any corresponding provision for the time being in force in Scotland.”.

Modification of the Marine and Coastal Access Act 2009

9.—(1) The Marine and Coastal Access Act 2009(**15**) is amended in accordance with paragraphs (2) and (3).

(2) In section 73, after subsection (3) insert—

“(4) The duty in subsection (1) does not apply in relation to a decision under section 71 to which section 73A applies.”.

(3) After section 73 insert—

“73A Proceedings for questioning certain decisions under sections 70 and 71

(1) If a person is aggrieved by a decision of the Scottish Ministers to which this section applies, and wishes to question the validity of the decision on either of the grounds mentioned in subsection (2), the person (the “aggrieved person”) may make an application to the Inner House of the Court of Session under this section.

(2) The grounds are that—

- (a) the decision is not within the powers of the Scottish Ministers under this Part,
- (b) one or more of the relevant requirements have not been complied with in relation to the decision.

(3) This section applies to—

- (a) a decision to cause, or not to cause, an inquiry to be held under section 70(1) in connection with the Scottish Ministers’ determination of an application for a marine licence to carry on an activity in respect of which a generating station application must also be made, and
- (b) a decision under section 71 in relation to an application for a marine licence to carry on such an activity.

(4) An application under this section must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.

(5) On an application under this section, the Inner House of the Court of Session—

- (a) may suspend the decision until the final determination of the proceedings,

(14) 2009 c.4.
(15) 2009 c.23.

- (b) may quash the decision either in whole or in part if satisfied that—
 - (i) the decision in question is not within the powers of the Scottish Ministers under this Part, or
 - (ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.
- (6) In this section—
 - “generating station application” means an application for consent under section 36 of the Electricity Act 1989 (consent for the construction etc. of generating stations) which falls (or would fall) to be granted by the Scottish Ministers;
 - “the relevant requirements”, in relation to a decision to which this section applies, means the requirements of this Act, or of any order or regulations made under this Part, which are applicable to that decision.

73B Applications under section 73A: requirement for permission

- (1) No proceedings may be taken in respect of an application under section 73A(1) unless the Inner House of the Court of Session has granted permission for the application to proceed.
- (2) The Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—
 - (a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and
 - (b) the application has a real prospect of success.
- (3) The Court may grant permission under subsection (1) for an application to proceed—
 - (a) subject to such conditions as the Court thinks fit, or
 - (b) only on such of the grounds specified in the application as the Court thinks fit.”
- (4) Section 73A of the Marine and Coastal Access Act 2009 does not apply in relation to a decision made before the coming into force of this Order.

Modification of the Copyright and Rights in Databases Regulations 1997

- 10.**—(1) The Copyright and Rights in Databases Regulations 1997(16) are amended as follows.
- (2) After paragraph 3(4) of Schedule 1 insert—
 - “(5) In sub-paragraph (4) the reference to an enactment includes any enactment contained in Part 3 of the Regulatory Reform (Scotland) Act 2014.”
- (3) After paragraph 6(2) of Schedule 1 insert—
 - “(2A) Sub-paragraph (1) applies in relation to an enactment contained in Part 3 of the Regulatory Reform (Scotland) Act 2014 as it applies in relation to an Act of Parliament.”
- (4) In paragraph 6(3) of Schedule 1, after “enactment” insert “or other statutory provision”.

Address
Date

Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Regulatory Reform (Scotland) Act 2014 (“the 2014 Act”).

Article 2 repeals sections 1(1)(d) and 5 of the Health and Safety at Work etc. Act 1974 (“the 1974 Act”), which provide respectively for Part 1 of that Act to have effect with a view to controlling the emission into the atmosphere of noxious or offensive substances from premises, and for a general duty on persons in control of certain premises in relation to harmful emissions into the atmosphere.

Sections 1(1)(d) and 5 of the 1974 Act were repealed as regards England and Wales on 16th December 1996 by Part 1 of Schedule 1 to the Environmental Protection Act 1990 (“the 1990 Act”), and matters relating to the controlling of such emissions are now regulated under other enactments including the Pollution Prevention and Control Act 1999 and regulations to be made under section 18 of the 2014 Act. Article 2 therefore completes the repeal of those sections.

Article 3 provides that certain acts carried out in relation to Part 3 of the 2014 Act are covered by the exceptions to copyright in sections 47 and 50(1) of the Copyright, Designs and Patents Act 1988. The Order does this by deeming the term “enactment” in section 47(6) and the term “Act of Parliament” in section 50(1) to include Part 3 of the 2014 Act. Article 3 does not affect any defence of statutory authority otherwise available under or by virtue of any statutory provision in relation to things done under Part 3 of the 2014 Act.

Articles 4 and 9 are consequential on section 54 of the 2014 Act, which amends the Marine (Scotland) Act 2010 (“the 2010 Act”) to confer a right to challenge certain marine licensing decisions made by the Scottish Ministers and decisions as to whether to hold a public inquiry in connection with the Ministers’ determination of applications for marine licences. The 2014 Act amends the 2010 Act to provide for a statutory appeal to the Inner House of the Court of Session by any person or body who is aggrieved by a decision of the Scottish Ministers. The statutory appeal applies only to Scottish Ministers’ decisions taken under sections 28 and 29 of the 2010 Act regarding marine licence applications which relate to activities where the consent of the Scottish Ministers under section 36 of the Electricity Act 1989 is also required.

Article 4 amends the Electricity Act 1989 to provide for a statutory appeal to the Inner House of the Court of Session by any person or body who is aggrieved by certain specified decisions of the Scottish Ministers made under that Act in relation to an application for consent to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations within the Scottish inshore or Scottish offshore region. The amendments made by article 4 do not apply to decisions made before the coming into force date of this Order.

Article 5 amends the 1990 Act, and is consequential on the amendments made by article 2.

Article 6 amends the Environment Act 1995, and is also consequential on the amendments made by article 2.

Article 7 amends the Income Tax (Trading and Other Income) Act 2005 so that the meaning of “waste disposal licence” in section 167 of that Act includes an authorisation under regulations made under section 18 of the 2014 Act, with the effect that when calculating the profits of a trade in which waste materials are deposited on a waste disposal site by a trader holding such a licence, the meaning of that term includes such an authorisation.

Article 8 amends section 144 of the Corporation Taxes Act 2009 with the same effect as the amendment by article 7 has on section 167 of the Income Tax (Trading and Other Income) Act 2005.

Article 9 amends the Marine and Coastal Access Act 2009 to provide for a statutory appeal to the Inner House of the Court of Session by any person or body who is aggrieved by certain specified decisions of the Scottish Ministers made under that Act in relation to marine licensable activities concerning electricity generating stations to be situated in the Scottish offshore region. The amendments made by article 9 do not apply to decisions made before the coming into force date of this Order.

Article 10 provides that certain acts carried out in relation to Part 3 of the 2014 Act are covered by exceptions to copyright in paragraphs 3(4) and 6(1) of Schedule 1 to the Copyright and Rights in Databases Regulations 1997. The Order does this by deeming the term “enactment” in paragraph 3(4) and the term “Act of Parliament” in paragraph 6(1) to include Part 3 of the 2014 Act. Article 10 of the Order does not affect any defence of statutory authority otherwise available under or by virtue of any statutory provision in relation to things done under Part 3 of the 2014 Act.