

2011 No. 396

CONSTITUTIONAL LAW

HARBOURS, DOCKS, PIERS AND FERRIES

REGISTERS AND RECORDS

REGULATORY REFORM

ROADS AND BRIDGES

SHERIFF COURT

TRANSPORT AND WORKS

The Interpretation and Legislative Reform (Scotland) Act 2010
(Consequential, Savings and Transitional Provisions)
Order 2011

Made - - - - *10th November 2011*

Coming into force in accordance with article 1

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 56 and 57(1) and (3) of the Interpretation and Legislative Reform (Scotland) Act 2010^(a) and all other powers enabling them to do so.

In accordance with section 57(4) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Interpretation and Legislative Reform (Scotland) Act 2010 (Consequential, Savings and Transitional Provisions) Order 2011 and comes into force on the day after the day on which it is made.

^(a) 2010 asp 10.

Interpretation

2. In this Order—

“the 1964 Act” means the Harbours Act 1964(a); and

“the 1984 Act” means the Roads (Scotland) Act 1984(b).

Amendment of the Sheriff Courts (Scotland) Act 1907

3.—(1) Section 40 of the Sheriff Courts (Scotland) Act 1907(c) (Court of Session to regulate fees, &c.) is amended in accordance with paragraphs (2) to (4).

(2) That section becomes subsection (1) of section 40.

(3) In that subsection, omit the words from “Provided” to the end.

(4) After that subsection insert—

“(2) An Act of Sederunt under this section is subject to the negative procedure.”.

Amendment of the Public Records (Scotland) Act 1937

4. For section 12(2) of the Public Records (Scotland) Act 1937(d) (which concerns the parliamentary scrutiny of regulations dealing with the disposal of certain documents) substitute—

“(2) Regulations under this section are subject to the negative procedure.”.

Amendment of the 1964 Act

5. The 1964 Act is modified in accordance with articles 6 and 7.

6. In section 54A (“developments of national significance” etc.: special procedure)(e)—

(a) for subsection (1) substitute—

“(1) Subsection (4) below applies to a harbour revision order or harbour empowerment order which falls within subsection (2) below.”;

(b) in subsection (2)—

(i) for “A statutory instrument” substitute “An order”;

(ii) in paragraph (a), for “the order in question” substitute “it”; and

(iii) in paragraph (b), for “the instrument” substitute “it”;

(c) for subsection (4) substitute—

“(4) The order is subject to the affirmative procedure.”; and

(d) in subsection (5)—

(i) for “An instrument containing an order” substitute “An order (“the new order”)”;

(ii) for “instrument laid before the Parliament under paragraph (a)” substitute “order (“the old order”) which was subject to the affirmative procedure by virtue”; and

(iii) in paragraph (a)—

(aa) after “the” where it first occurs insert “new”; and

(bb) for “instrument revoked, amended or re-enacted” substitute “old order”.

(a) 1964 c.40.

(b) 1984 c.54.

(c) 1907 c.51; section 40 has been amended by the First Schedule to the Sheriff Courts (Scotland) Act 1913 (c.28), section 1(3) of the Secretaries of State Act 1926 (c.18), the Schedule to the Administration of Justice (Scotland) Act 1933 (c.41) and by paragraph 7 of Schedule 1 and Schedule 2 to the Divorce Jurisdiction, Court Fees and Legal Aid (Scotland) Act 1983 (c.12).

(d) 1937 c.43; section 12 was extended by section 5 of the Public Registers and Records (Scotland) Act 1948 (c.57) and was last amended by section 19(3) of the National Heritage (Scotland) Act 1985 (c.16).

(e) Section 54A was inserted by section 25(3) of the Transport and Works (Scotland) Act 2007 (asp 8).

7. In Schedule 3 (procedure for making harbour revision and empowerment orders)(a)—
- (a) in paragraph 21(1)(b), after “order” insert “or, if the order is subject to the affirmative procedure by virtue of section 54A(4) of this Act, lay before the Scottish Parliament a draft statutory instrument containing it.”;
 - (b) in paragraph 24(1) after “made” insert “, or where (by virtue of section 54A(4) of this Act) the order is subject to the affirmative procedure a draft statutory instrument containing it has been laid before the Scottish Parliament”;
 - (c) in paragraph 24(2)—
 - (i) in head (a), after “made” insert “, or as the case may be that a draft statutory instrument containing it has been laid before the Scottish Parliament”; and
 - (ii) for head (d) substitute—
 - “(d) if that subsection does apply to the order, state that the order cannot be made unless the Scottish Parliament, by resolution, approves the draft statutory instrument containing it.”;
 - (d) in paragraph 24(3)—
 - (i) from the beginning to “order” where it first occurs substitute “Where a harbour revision order is subject to the affirmative procedure by virtue of section 54A(4) of this Act, as soon as possible after the order has been made or the Scottish Parliament has decided not to approve the draft statutory instrument containing it”;
 - (ii) for head (a) substitute—
 - “(a) stating that the order has been made, or as the case may be that the Scottish Parliament has decided not to approve the draft statutory instrument containing it, and”; and
 - (iii) in head (b), for “a resolution has been passed” substitute “the order has been made”;
 - (e) in paragraph 30(b), after “order” insert “or, if the order is subject to the affirmative procedure, lay before the Scottish Parliament a draft statutory instrument containing it.”; and
 - (f) in paragraph 31—
 - (i) after sub-paragraph (2) insert—
 - “(2A) Sub-paragraphs (2B) and (3) apply in relation to a harbour revision order where—
 - (a) the Scottish Ministers have proposed to make the order of their own motion, and
 - (b) the order is subject to the affirmative procedure by virtue of section 54A(4) of this Act.
 - (2B) The reference in sub-paragraph (1) to the order having been made by the Secretary of State of his own motion is to be read as a reference to a draft statutory instrument containing the order having been laid before the Scottish Parliament.”; and
 - (ii) in sub-paragraph (3), for the words from “Scottish”, where it first occurs, to “those” substitute “order is made or the Scottish Parliament has decided not to approve a draft statutory instrument containing the order, the Scottish”.

Savings and transitional provision in relation to the 1964 Act

8. Articles 5 to 7 do not apply in relation to any subordinate legislation under the 1964 Act that was made before 6th April 2011.

9. For the purposes of section 54A(5) of the 1964 Act, an order which was made before 6th April 2011 and approved by the Scottish Parliament in accordance with section 54A(4) of that Act is to be deemed to have been subject to the affirmative procedure by virtue of that subsection.

(a) Schedule 3 was substituted by S.I. 1999/3445 and has been amended by section 25 of, and schedule 3 to, the Transport and Works (Scotland) Act 2007.

Amendment of the Sheriff Courts (Scotland) Act 1971

10. For section 12E(4) and (5) of the Sheriff Courts (Scotland) Act 1971(a) substitute—

“(4) Such an order—

- (a) is subject to the negative procedure; and
- (b) is not to be made so as to come into effect before the expiry, in relation to the instrument containing the order, of the period of 40 days mentioned in section 28(3) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).”.

Amendment of the European Communities Act 1972

11. In paragraph 2C(c) of Schedule 2 to the European Communities Act 1972(b), for “article 11 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096)” substitute “section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)”.

Amendment of the 1984 Act

12. The 1984 Act is modified in accordance with articles 13 to 15.

13. In section 143A (“developments of national significance” etc.: special procedure)(c)—

- (a) in subsection (1)—
 - (i) from “Subsection” to “which”, where it first occurs, substitute “Subject to subsection (4), subsection (3) applies to any”;
 - (ii) in paragraph (a) omit “contains an”;
 - (iii) in paragraph (b)—
 - (aa) omit “contains or confirms a”; and
 - (bb) after “Act” insert “(or any instrument confirming such a scheme)”; and
 - (iv) in paragraph (c), at the beginning, insert “subordinate legislation which”;
- (b) for subsection (3) substitute—

“(3) The legislation is subject to the affirmative procedure.”; and
- (c) in subsection (4)—
 - (i) for “an instrument containing or confirming an order or scheme” substitute “any subordinate legislation”; and
 - (ii) for “an instrument laid before the Scottish Parliament under paragraph (a)” substitute “any legislation which was subject to the affirmative procedure by virtue”.

14. In Schedule 1 (procedures for making or confirming certain orders and schemes)—

- (a) in paragraph 7(1), from “make” to the end substitute—

“—

 - (a) make or confirm the order (with or without modifications); or
 - (b) where the order is subject to the affirmative procedure by virtue of section 143A(3) of this Act, lay before the Scottish Parliament a draft statutory instrument containing the order (with or without modifications).”;

(a) 1971 c.58; section 12E was inserted by section 40 of the Judiciary and Courts (Scotland) Act 2008 (asp 6).

(b) 1972 c.68; paragraph 2C of Schedule 2 was inserted by section 29 of the Legislative and Regulatory Reform Act 2006 (c.51).

(c) Section 143A was inserted by section 24 of the Transport and Works (Scotland) Act 2007.

- (b) in paragraph 7(1BA)—
 - (i) for head (b) substitute—
 - “(b) the order giving effect to that decision is subject to the affirmative procedure by virtue of section 143A(3) of this Act,”; and
 - (ii) from “the instrument” to the end substitute “the order cannot be made unless the Scottish Parliament, by resolution, approves a draft statutory instrument containing it”;
- (c) in paragraph 13(1), at the end insert “or, where the scheme is subject to the affirmative procedure by virtue of section 143A(3) of this Act, lay before the Scottish Parliament a draft statutory instrument containing the scheme (with or without modification)”;
- (d) in paragraph 13(1BA)—
 - (i) in head (b)—
 - (aa) at the beginning insert “a draft of”; and
 - (bb) for “143A(3)(a)” substitute “143A(3)”;
 - (ii) for “come into force until” substitute “be made unless”; and
 - (iii) for “it” substitute “the draft statutory instrument”.

15. In Schedule 2 (validity and date of operation of certain orders and schemes)—

- (a) in paragraph 1—
 - (i) after “State” insert “(or where the order, scheme or instrument confirming the scheme is subject to the affirmative procedure by virtue of section 143A(3) of this Act, after a draft statutory instrument containing or confirming the order or scheme has been laid before the Scottish Parliament)”;
 - (ii) in sub-paragraph (a), after “confirmed” insert “, or as the case may be, that a draft statutory instrument containing or confirming it has been laid before the Scottish Parliament”;
 - (iii) in sub-paragraph (c), for “statutory instrument containing or confirming the scheme or order” substitute “order, scheme or instrument confirming the scheme”; and
 - (iv) in sub-paragraph (d)—
 - (aa) from “relevant” to “until” substitute “order, scheme or instrument confirming the scheme, stating that the order, scheme or instrument confirming the scheme cannot be made unless”; and
 - (bb) after “approves” insert “a draft statutory instrument containing”;
- (b) in paragraph 1A—
 - (i) from the beginning to “Act” substitute “Where an order, scheme or instrument confirming a scheme is subject to the affirmative procedure by virtue of section 143A(3) of this Act, as soon as may be after the Scottish Ministers have made the order, scheme or instrument confirming the scheme or, as the case may be, the Scottish Parliament has decided not to approve the draft statutory instrument laid before it under that section”;
 - (ii) for sub-paragraph (a) substitute—
 - “(a) stating that the order, scheme or instrument has been made or, as the case may be, the Parliament has decided not to approve the draft statutory instrument;”;
 - (iii) in sub-paragraph (b), for “a resolution has been passed” substitute “the order, scheme or instrument has been made”.

Savings and transitional provision in relation to the 1984 Act

16. Articles 12 to 15 do not apply in relation to any subordinate legislation under the 1984 Act that was made before 6th April 2011.

17. For the purposes of section 143A(4) of the 1984 Act, any legislation which was made before 6th April 2011 and approved by the Scottish Parliament in accordance with subsection (3) of section 143A of that Act is to be deemed to have been subject to the affirmative procedure by virtue of that subsection.

Amendment of the Transport and Works (Scotland) Act 2007

18. The Transport and Works (Scotland) Act 2007 is modified in accordance with articles 19 to 22.

19. In section 11 (making or refusal of orders under section 1)—

(a) in subsection (6), from the beginning to “section 1” substitute “An order under section 1 which is not subject to the affirmative procedure by virtue of section 13”; and

(b) after subsection (6) insert—

“(7) In relation to an order which, by virtue of section 13, is subject to the affirmative procedure, references to making an order in subsections (2)(a) and (b) and (5) are to be read as references to laying before the Parliament a draft statutory instrument containing an order.”.

20. In section 12 (publicity for making or refusal of order)—

(a) in subsection (2)(a), after “made” where it first occurs insert “or contained in the draft statutory instrument laid before the Parliament”;

(b) for subsection (3) substitute—

“(3) Where the order is subject to the affirmative procedure by virtue of section 13, any notice giving information under sub-paragraph (iv) of subsection (2)(b) must intimate that the order cannot be made unless the Parliament, by resolution, approves the draft statutory instrument containing the order.”.

(c) in subsection (6), after “made” insert “(or where the order is subject to the affirmative procedure by virtue of section 13 a draft of the statutory instrument is to be laid before the Parliament)”;

(d) in subsection (13)—

(i) after “section 1” insert “(or where the order is subject to the affirmative procedure by virtue of section 13, after a draft of the statutory instrument containing the order is laid before the Parliament)”;

(ii) after “6” insert “, or is to be made by virtue of that section if the Parliament approves the draft statutory instrument containing it”; and

(iii) in paragraph (b)(i), after “order” insert “or where the order is subject to the affirmative procedure a draft of the statutory instrument containing the order”; and

(e) in subsection (14), from “contained” to the end substitute “subject to the affirmative procedure by virtue of section 13”.

21. In section 13 (“developments of national significance” etc.: special procedure)—

(a) in subsection (1), from the beginning to “containing” substitute “Subsections (2A) to (6) apply in relation to”;

(b) after subsection (2) insert—

“(2A) The order is subject to the affirmative procedure.”;

(c) in subsection (3)—

(i) in the opening words, for “statutory instrument” substitute “draft statutory instrument containing the order”; and

(ii) omit paragraph (b) and the “, and” immediately preceding it;

(d) in subsection (4), for “order is made” substitute “draft statutory instrument is laid before the Parliament”;

- (e) in subsection (5), for “Parliament has decided whether or not to approve the instrument” substitute “order has been made or, as the case may be, the Parliament has decided not to approve the draft statutory instrument”;
- (f) in subsection (6)—
 - (i) in paragraph (a), from “Parliament” to the end substitute “order has been made or, as the case may be, the Parliament has decided not to approve the draft statutory instrument”; and
 - (ii) in paragraph (b), for “a resolution has been passed” substitute “the order has been made”;
- (g) for subsection (7) substitute—

“(7) Subsections (2A) to (6) apply in relation to an order (“the new order”) which revokes, amends or re-enacts another order (“the old order”) in relation to which those subsections applied only if—

 - (a) the new order authorises the carrying out of work which would constitute a national development (other than a national development to which the old order relates),
 - (b) the new order includes provision such as is mentioned in subsection (1)(b), or
 - (c) the Scottish Ministers so direct.”.

22. In section 21 (annual report)—

- (a) after subsection (1)(a) insert—

“(aa) such draft statutory instruments containing orders under section 1 which were laid before the Parliament in the relevant period but which had not been approved by the Parliament as at the date that period ended,”;
- (b) in subsection (2)(a) after “order” insert “and draft statutory instrument”;
- (c) at the end of subsection (2)(c) insert—

“,
- (d) in relation to each draft statutory instrument the length of time which elapsed between—
 - (i) the application for an order being made under section 4, or
 - (ii) where no application was made, notice of the proposal to make the order being published under section 6(3)(b),

and the draft statutory instrument containing the order being laid before the Parliament”.

BRIAN ADAM

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th November 2011

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies certain enactments in consequence of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”).

The following enactments are amended by articles 3, 4 and 10 (respectively) to ensure that subordinate legislation made under them is subject to the negative procedure as defined by section 28 of the 2010 Act:—

- (a) section 40 of the Sheriff Courts (Scotland) Act 1907;
- (b) section 12 of the Public Records (Scotland) Act 1937; and
- (c) section 12E of the Sheriff Courts (Scotland) Act 1971.

Prior to schedule 3 to the 2010 Act coming into force on 6th April 2011, subordinate legislation made under the Harbours Act 1964, the Roads (Scotland) Act 1984 and the Transport and Works (Scotland) Act 2007 (collectively referred to in this Note as “the Transport Acts”) was, in certain circumstances, subject to the made affirmative procedure. Under that procedure the subordinate legislation could be made, but could not come into force unless it was laid before and approved by a resolution of the Scottish Parliament. With effect from 6th April 2011, paragraph 6 of schedule 3 to the 2010 Act modified the Transport Acts so that subordinate legislation made on or after that date which would formerly have been subject to the made affirmative procedure is instead subject to the affirmative procedure as defined by section 29 of the 2010 Act. Subordinate legislation subject to the affirmative procedure cannot be made unless a draft of the Scottish statutory instrument containing it is laid before, and approved by resolution of, the Scottish Parliament. In consequence of the change from made affirmative procedure to the affirmative procedure (as defined by section 29 of the 2010 Act), references in the Transport Acts to subordinate legislation that has been made should, in the circumstances where the affirmative procedure applies, be references to subordinate legislation contained in a draft Scottish statutory instrument. To that end, articles 5 to 7 modify the Harbours Act 1964, articles 12 to 15 modify the Roads (Scotland) Act 1984 and articles 18 to 22 modify the Transport and Works (Scotland) Act 2007.

Any subordinate legislation that was made under one of the Transport Acts before 6th April 2011 and was, at that time, subject to the made affirmative procedure remains subject to that procedure by virtue of article 5 of S.S.I. 2011/88. Accordingly, article 8 provides that the modifications made to the Harbours Act 1964 by articles 5 to 7 of this Order do not apply in relation to subordinate legislation made under that Act before 6th April 2011. Article 16 makes equivalent provision in relation to the modifications this Order makes to the Roads (Scotland) Act 1984.

As enacted section 54A(5) of the Harbours Act 1964 applied in relation to the revocation, amendment or re-enactment of any subordinate legislation that was, by virtue of that section, subject to the made affirmative procedure. Article 6(d) amends section 54A(5) so that it applies instead in relation to the revocation, amendment or re-enactment of subordinate legislation subject to the affirmative procedure by virtue of that section as amended by this Order. Article 9 makes transitional provision so that despite its amendment by article 6(d), section 54A(5) applies in relation to the revocation, amendment or re-enactment of subordinate legislation that was made before 6th April 2011 and was, by virtue of that section, subject to the made affirmative procedure. Article 17 makes equivalent provision in relation to the Roads (Scotland) Act 1984.

Article 11 modifies the European Communities Act 1972 to replace a reference to article 11 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999, which ceased to have effect on 6th April 2011 by virtue of section 55(4) of the 2010 Act, with a reference to section 28 of the 2010 Act.

SCOTTISH STATUTORY INSTRUMENTS

2011 No. 396

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