STATUTORY INSTRUMENTS

2015 No. 374

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

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

Made - - - -	*25th February 2015*
Coming into force - -	*26th February 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.

(2) In section 1, subsection (1)(d) and the word "and" preceding it are repealed.

(3) Section 5 is repealed.

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

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—

"**Proceedings for questioning certain decisions under section 36**

36D.—(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—

"relevant waters" has the same meaning as in section 36A(7)(**7**);

(**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).
(**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).

"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.

Applications under section 36D: requirement for permission

36E.—(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—

"**Proceedings for questioning certain decisions under paragraph 3(2)**

5B.—(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.

(6) In this paragraph—

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

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

"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.

Applications under paragraph 5B: requirement for permission

5C.—(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.