

POLICY NOTE

THE REGULATORY REFORM (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 2 AND TRANSITIONAL PROVISION) ORDER 2015

SSI 2015/52 (C. 9)

1. The above Order is made by the Scottish Ministers in exercise of the powers conferred by section 61(2) and (3) of the Regulatory Reform (Scotland) Act 2014 and all other powers enabling them to do so.

Background

2. The provisions within the Regulatory Reform (Scotland) Bill were announced by the First Minister in the Programme for Government in September 2012 to improve further the way regulations are applied in practice across Scotland (in particular to apply Better Regulation principles of proportionality, consistency, accountability, transparency and targeting to regulatory activity in Scotland).
3. Further background on the content and passage of the Bill may be found here: <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/61582.aspx>
4. The Regulatory Reform (Scotland) Act 2014 (“the 2014 Act”) received Royal Assent on 19th February 2014.

Marine licence applications

5. Currently, an applicant wishing to challenge Scottish Ministers’ decisions made under the marine licensing provisions of the Marine and Coastal Access Act 2009 (“the 2009 Act”) and the Marine (Scotland) Act 2010 (“the 2010 Act”) may appeal to the Sheriff, by Summary Application procedure. In the event of any onward appeal, proceedings would thereafter be considered by the Sheriff Principal, then the Court of Session (Outer House), then the Court of Session (Inner House) and then to the Supreme Court - leading to a lengthy appeals process. Third parties who wish to challenge such decisions would require to raise judicial review proceedings in the Court of Session in the Outer House of the Court of Session, with any appeals from such proceedings being heard by the Inner House and then by the Supreme Court.
6. Currently, a person who wishes to challenge Scottish Ministers’ decisions made under the provisions of the Electricity Act 1989 (“the 1989 Act”) concerning the consenting of marine renewable energy projects would raise judicial review proceedings in the Court of Session in the Outer House. Any onward appeals would be heard by the Inner House and then the Supreme Court.
7. Under the new appeals process provided by section 54 of the 2014 Act and by the Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 – challenges to decisions made in respect of marine renewable energy projects in excess of 1 Megawatt – will proceed directly to the Inner House of the Court of Session. The proposed change, provides that these appeals leapfrog direct to the Court of Session (Inner House), thus removing the earlier stages.

Merchant Shipping Act 1995: Discharges etc. authorised under other enactments

8. Section 136A of the Merchant Shipping Act 1995 is prospectively inserted by paragraph 13 of Schedule 2 to the Pollution Prevention and Control Act 1999 (“the 1999 Act”). It deals with the interaction between different regimes authorising marine discharges. It disapplies sections 131(1) and 136(1) of the 1999 Act, which deal with discharges of oil into UK waters and harbours, in relation to discharges authorised under Part I of the Environmental Protection Act 1990 (now defunct) or under regulations under section 2 of the 1999 Act. Paragraph 6 of Schedule 3 to the Regulatory Reform (Scotland) Act 2014 amends section 136A of the 1995 Act by inserting a reference to authorisations under regulations under section 18 of the 2014 Act (regulations relating to protecting and improving the environment). This ensures the correct interaction between these regulatory regimes once such regulations are made.

Policy Objectives

9. This Order brings into force:
 - Section 54 of the 2014 Act on 26th February 2015. That provision amends the the 2010 Act by amending section 38 and inserting new sections 63A and 63B.
 - Transitional provision is made by article 3 of this Order to provide that the newly inserted provisions of the 2010 Act do not apply in relation to marine licensing decisions made under sections 28 and 29 of the 2010 Act that are made before 26th February 2015 and which concern electricity generating station applications. That is consistent with transitional provision made in the Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 which provides for the same appeal regime in both the 1989 Act and the 2009 Act relating to such decisions that are made concerning marine renewable energy projects.
 - Paragraph 6 of Schedule 3 to the 2014 Act on 1st October 2015 and, only in so far as necessary for the purpose of commencing that paragraph, section 57 of that Act. Paragraph 6 of Schedule 3 amends section 136A of the Merchant Shipping Act 1995 (c.21) (“the 1995 Act”) (discharges etc. authorised under other enactments).

Commencement

10. This Order comes into force on the 26th February 2015 and commences section 54 of the 2014 Act (marine licence applications etc.: proceedings to question validity of decisions) on that date.
11. 1st October 2015 is the day appointed for the coming into force of paragraph 6 of Schedule 3 to the 2014 Act (minor and consequential modifications) and, only in so far as necessary for the purpose of commencing that paragraph, section 57 (consequential modifications and repeals) of the 2014 Act.

Impact Assessments

12. No impact assessments are required in consequence of this Order. Impact assessments carried out prior to the introduction of the Bill in the Scottish Parliament can be

viewed on the Scottish Government
website.([http://www.scotland.gov.uk/Topics/Business-Industry/support/better-
regulation/BetterRegulationBillConsultation](http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/BetterRegulationBillConsultation))

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