
DRAFT STATUTORY INSTRUMENTS

2015 No.

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

Modification of the Marine and Coastal Access Act 2009

9.—(1) The Marine and Coastal Access Act 2009⁽¹⁾ 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,
- (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.