

EXPLANATORY MEMORANDUM TO
THE REGULATORY REFORM (SCOTLAND) ACT (CONSEQUENTIAL
MODIFICATIONS) ORDER 2019

2019 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Business, Energy and Industrial Strategy for the Office of the Secretary of State for Scotland and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to amend previous legislation with respect to the Scottish part of the Renewable Energy Zone (REZ) i.e. to correct amendments made to the Electricity Act 1989 (“the 1989 Act”) by article 4 of the Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374) (“the 2015 Order”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 The territorial application of this instrument includes Scotland
- 3.3 The powers under which this instrument is made cover the entire United Kingdom but amend the 1989 Act only in respect of Scotland.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England, Wales and Scotland.
- 4.2 The territorial application of this instrument is Scotland only.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for Scotland has made the following statement regarding Human Rights:

“In my view the provisions of the Regulatory Reform (Scotland) Act (Consequential Modifications) (Amendment) Order 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Section 54 of the Regulatory Reform (Scotland) Act 2014 (“the 2014 Act”) amended the Marine (Scotland) Act 2010 to provide for a statutory appeal to the Court of Session in respect of (a) marine licensing decisions on applications for electricity generating stations in Scottish internal waters and the territorial sea adjacent to

Scotland and (b) decisions on whether to have a public inquiry in relation to such applications.

- 6.2 The 2015 Order was made in consequence of section 54 of the 2014 Act. It amended the 1989 Act by inserting section 36D and paragraph 5B of Schedule 8 to provide for the same statutory appeal procedure in respect of Scottish Ministers' decisions taken on applications for section 36 consent, and decisions on whether or not to cause a public inquiry to be held in respect of such applications under that Act, in relation to "relevant waters" – defined as Scottish internal waters and the territorial sea adjacent to Scotland.
- 6.3 This instrument is made to correct an oversight in the 2015 Order by amending the definition of "relevant waters" in section 36D(6) of, and paragraph 5B(6) of Schedule 8 to, the 1989 Act, so as to include the Scottish part of the REZ.

7. Policy background

What is being done and why?

- 7.1 This Order ensures that the same appeal mechanism applies whether there is a challenge against a decision of the Scottish Ministers on an application for a marine licence under the Marine and Coastal Act 2009 or on an application for a section 36 consent under the 1989 Act, in relation to an energy generating station development to be situated in Scottish internal waters, territorial sea and the Scottish part of the REZ.
- 7.2 The purpose of the 2014 Act is to improve the way regulation is developed and applied, creating more favourable business conditions in Scotland and delivering benefits for the environment. The Act accelerates the procedure by which appeals are determined by fast-tracking legal challenges to minimise the impact of delays on such infrastructure projects arising from recourse to the courts.
- 7.3 This instrument is to be laid following another instrument, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers) Order 2018. That Order provides that a Minister of the Crown's regulation making functions under the European Communities Act 1972, designated to them under the European Communities (Designation) Order 2008 (S.I. 2008/301), and exercisable in relation to assessing the effects on the environment of the construction, extension or operation of generating stations under section 36 of the Electricity Act 1989 in the Scottish Part of the REZ, are exercisable concurrently with the Scottish Ministers. This Explanatory Memorandum should be read in conjunction with the EM to that instrument.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There is no intention to consolidate this instrument with another instrument.

10. Consultation outcome

- 10.1 A consultation exercise has not been conducted as this instrument amends a legislative oversight and does not introduce any new measures.

11. Guidance

- 11.1 No guidance has been produced as this instrument does not introduce any new measures.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because this instrument does not introduce any new measures.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The instrument will achieve its policy objective of amending a legislative oversight and therefore monitoring and review are not required.

15. Contact

- 15.1 Mandy King at the Department for Business, Energy and Industrial Strategy. telephone 0300 068 5673 or email mandy.king@beis.gov.uk can answer any queries regarding the instrument.
- 15.2 Emily Bourne, Director for Energy Development and Resilience, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt. Hon Claire Perry MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.