
STATUTORY INSTRUMENTS

2015 No. 374

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

Modification of the Electricity Act 1989

- 4.—(1) The Electricity Act 1989⁽¹⁾ is amended in accordance with paragraphs (2) and (3).
(2) After section 36C⁽²⁾ insert—

“36D Proceedings for questioning certain decisions under section 36

(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)⁽³⁾;

“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.

(1) 1989 c.29.

(2) Section 36C was inserted by the Growth and Infrastructure Act 2013 (c.27), section 20(2).

(3) 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).

36E Applications under section 36D: requirement for permission

(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(4) insert—

“5B Proceedings for questioning certain decisions under paragraph 3(2)

(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);

“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.

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

5C Applications under paragraph 5B: requirement for permission

- (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.