

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixteenth Delegated Legislation Committee

DRAFT SCOTLAND ACT 1998 (TRANSFER OF
FUNCTIONS TO THE SCOTTISH MINISTERS ETC.)
ORDER 2019

Wednesday 27 March 2019

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The Committee consisted of the following Members:

Chair: MR ADRIAN BAILEY

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| † Adams, Nigel (<i>Parliamentary Under-Secretary of State for Wales</i>) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Bebb, Guto (<i>Aberconwy</i>) (Con) | † Murray, Ian (<i>Edinburgh South</i>) (Lab) |
| † Brown, Alan (<i>Kilmarnock and Loudoun</i>) (SNP) | † Spelman, Dame Caroline (<i>Second Church Estates Commissioner</i>) |
| † Campbell, Mr Ronnie (<i>Blyth Valley</i>) (Lab) | † Stevens, Jo (<i>Cardiff Central</i>) (Lab) |
| Coaker, Vernon (<i>Gedling</i>) (Lab) | † Stevenson, John (<i>Carlisle</i>) (Con) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| † Fellows, Marion (<i>Motherwell and Wishaw</i>) (SNP) | † Sweeney, Mr Paul (<i>Glasgow North East</i>) (Lab/Co-op) |
| † Hair, Kirstene (<i>Angus</i>) (Con) | |
| † Lamont, John (<i>Berwickshire, Roxburgh and Selkirk</i>) (Con) | Medha Bhasin, <i>Committee Clerk</i> |
| † Lefroy, Jeremy (<i>Stafford</i>) (Con) | † attended the Committee |

Sixteenth Delegated Legislation Committee

Wednesday 27 March 2019

[ADRIAN BAILEY *in the Chair*]

Draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019

8.55 am

The Parliamentary Under-Secretary of State for Wales (Nigel Adams): I beg to move,

That the Committee has considered the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019.

It is a pleasure, as always, to serve under your chairmanship, Mr Bailey. I am pleased that the Committee have been allowed the opportunity to debate the draft order, which is made under sections 30 and 63 of the Scotland Act 1998 and seeks to confirm legal certainty on Scottish Ministers' regulation-making powers under section 2 of the European Communities Act 1972. The powers concern environmental impact assessments in relation to electricity generating stations consented under section 36 of the Electricity Act 1989 that are located in the Scottish part of the renewable energy zone. The regulation-making powers are in implementation of directive 2014/52/EU, on the assessment of the effects of certain public and private projects on the environment.

Section 30 of the Scotland Act provides that Her Majesty may, by Order in Council, specify functions that are to be treated for such purposes of that Act as being functions that are exercisable in or as regards Scotland. That power paves the way for the transfer of the specified functions to Scottish Ministers. Section 63 of the Scotland Act allows an Order in Council to provide for any functions of a UK Minister of the Crown, so far as they are exercisable in or as regards Scotland, to be exercisable by Scottish Ministers concurrently with the Minister of the Crown.

The effect of the order is to confirm that EIA regulatory functions connected to energy consent within the Scottish part of the REZ are deemed to be exercisable in or as regards Scotland, and then to confirm that those functions are available to Scottish Ministers.

To give the Committee some context for this technical order, developers who plan to construct, extend or operate certain electricity generating stations must first obtain a consent under section 36 of the 1989 Act. The generation, transmission, distribution and supply of electricity are reserved matters under schedule 5 to the Scotland Act. However, since 1999 functions relating to electricity have been transferred by Executive devolution to Scottish Ministers. The order removes any possible ambiguity around the functions available to Scottish Ministers by confirming the legal position. It confirms that Scottish Ministers have EIA regulatory functions concurrent with those of a Minister of the Crown in respect of the Scottish part of the REZ—the area from 12 nautical miles up to 200 nautical miles from Scotland's coastline—and thus confirming that the UK meets its obligations to transpose fully the EIA directive.

Ian Murray (Edinburgh South) (Lab): The Committee has just witnessed the shortest shadow ministerial reign in parliamentary history, as my hon. Friend the Member for Glasgow North East has now arrived.

Is a section 30 in this case permanent? Section 30s have been used in the past to transfer powers temporarily to the Scottish Government. For example, section 30 was used to allow the Scottish Parliament the power to hold the independence referendum in 2014. Is it permanent, and how can we be assured that the Scottish Government will use the powers, given that many powers that have been transferred—particularly in welfare under the Scotland Act 2016—have been handed back to the UK Government?

Nigel Adams: The hon. Gentleman—I congratulate him on his tenure as shadow Minister, which he carried out with great aplomb—makes a reasonable point, which I will come back to in my summing up. My initial reaction is that the response would be affirmative, but I will come on to that.

The draft order was laid one week before another related instrument, the Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2019, which amends the 1989 Act to extend the statutory appeals procedure for consent applications made under section 36 to apply where the energy infrastructure is situated in the Scottish part of the REZ. That ensures alignment with section 36 applications in Scottish internal waters, and in the territorial sea adjacent to Scotland and other applications in relation to such infrastructure.

The UK Government and the Scottish Government have worked together closely to ensure that this order confirms a legal position for Scottish Ministers, and the order demonstrates that the UK Government remain committed to strengthening the devolution settlement and shows that Scotland's two Governments are working together. As indicated, the order is necessary. I hope that hon. Members will agree that the practical result is to be welcomed, and I commend the order to the Committee.

9 am

Mr Paul Sweeney (Glasgow North East) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Bailey. I apologise for my tardiness—I know that I was ably substituted by my hon. Friend the Member for Edinburgh South in the interim. It is wonderful to speak in a Delegated Legislation Committee and not be talking about Brexit, which is a novelty—I am sure it will not last more than a couple of hours. Given the number of statutory instruments relating to Brexit, I am sure that hon. Members are as pleased about that as I am.

The order amends previous legislation with respect to the Scottish part of the renewable energy zone. It is designed to correct amendments made to the Electricity Act 1989 by article 4 of the order. According to the explanatory memorandum, there was an "oversight" in the 2015 order, because its definition of "relevant waters" did not include the Scottish part of the REZ. This new order corrects that oversight and ensures that the same appeals mechanism applies whether there is a challenge against a decision of Scottish Ministers or an application for a marine licence in relation to an energy generating station development to be situated in Scottish internal waters, territorial sea or the Scottish part of the REZ.

The order confirms that Scottish Ministers have certain functions concurrent with those of a Minister of the Crown relating to the assessment of environmental effects under the EIA directive in respect of the Scottish part of the REZ. This ensures that the UK meets its obligations to transpose fully this directive.

It is important to draw the Committee's attention to the fact that the order has been laid alongside the Regulatory Reform (Scotland) Act (Consequential Modifications) Order 2019, which amends the Electricity Act 1989—passed in the same year I was born, incidentally—by extending the statutory appeals procedure for consent applications made under section 36 of the 1989 Act to apply where the infrastructure is situated in the Scottish part of the REZ. This ensures alignment with section 36 applications in Scottish internal waters and the territorial sea adjacent to Scotland, and with other applications in relation to such infrastructure. I believe that we were scheduled to debate that in the Chamber later today, although that might now have changed due to the ever-changing business of the House and subsequent important votes later.

The provisions made under section 30(3) of the Scotland Act 1998—regarding the making of EIA regulations in connection with applications for consent under section 36 of the Electricity Act 1989 for the construction, extension and operation of generating stations in the Scottish part of the REZ—will be treated as being functions exercisable in or as regards Scotland.

I will not detain hon. Members any longer. This is a straightforward, technical clarification and, as such, the Labour party will not oppose it.

9.3 am

Alan Brown (Kilmarnock and Loudoun) (SNP): It is a pleasure to serve under your chairmanship, Mr Bailey. I will not say very much either, because there seems no point in restating what this simple amendment does. Obviously it just corrects a previous oversight. It has been agreed with Scottish Ministers, and it is obviously a welcome transfer of powers. We welcome any additional transfer of powers to the Scottish Parliament. Clearly, the Scottish Government are leading at the moment on the production of renewable energy.

On marine renewable energy, the written answer I received last week says that the UK Government are not providing any direct funding for marine tidal energy. Hopefully that situation will be rectified going forward, so that we can further develop renewable energy. We welcome the transfer of powers.

9.4 am

Nigel Adams: I thank all hon. Members for their valuable and short contributions. I am afraid that I lost my bet—I was hoping to be done by 9.3 am. I would like to confirm the point raised by the hon. Member for Edinburgh South on section 30: this is seen very much as a permanent situation. Importantly, this instrument aims to confirm that Scottish Ministers have certain functions, concurrent with those of a Minister of the Crown, relating to the regulation of the assessment of environmental effects under the EIA directive in respect of the Scottish part of the REZ.

Question put and agreed to.

9.5 am

Committee rose.

