EXPLANATORY MEMORANDUM

THE REGULATORY REFORM (SCOTLAND) ACT 2014 (CONSEQUENTIAL PROVISIONS) ORDER 2015

2015 No. [XXXX]

1. 1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

This Order contains provision which is necessary or expedient in consequence of the Regulatory Reform (Scotland) Act 2014 ("the 2014 Act") to:

- amend the Marine and Coastal Access Act 2009 to provide for a parallel appeal regime as is provided by the Marine (Scotland) Act 2010, as amended by the 2014 Act, but in relation to Scottish Ministers' decisions on applications for electricity generating stations to be situated in the Scottish offshore region (12 to 200 nautical miles), both in relation to the determination of such applications and on whether or not to cause a public inquiry to be held;

- amend the Electricity Act 1989 to provide for the same appeal regime as is provided for the marine licensing regime under the Marine (Scotland) Act 2010, as amended by the 2014 Act, but 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. There is currently no statutory right of appeal against section 36 consent decisions under the 1989 Act; and

- make further minor or consequential provision to give the 2014 Act full effect.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 This Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3), (4) and (5) of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament

which contains provisions which are necessary or expedient in consequence of any provision made by or under any Act of the Scottish Parliament. This Order is subject to affirmative resolution procedure in the UK Parliament.

4.2 This Order is made in consequence of the 2014 Act which was passed by the Scottish Parliament on 16th January 2014 and gained Royal Assent on 19th February 2014. The 2014 Act is intended to improve the way regulation is developed and applied, creating more favourable business conditions in Scotland and delivering benefits for the environment. It intends to strike a balance between the need to licence offshore renewable energy projects and a right to challenge those decisions. The 2014 Act accelerates the procedure by which such appeals are determined by fast-tracking legal challenges in order to minimise the impact of delays on such infrastructure projects arising from recourse to the courts.

5. Territorial Extent and Application

5.1 Except as outlined in 5.2 this instrument extends to the whole of the United Kingdom.

5.2 Articles 2, 5(3) and 6(4) of this instrument extend to Scotland only.

6. European Convention on Human Rights

The Parliamentary Under Secretary of State for Scotland, the Rt Hon David Mundell MP, has made the following statement regarding Human Rights:

> *"In my view the provisions of the Regulatory Reform (Scotland) Act 2014 (Consequential Provisions) Order 2015 are compatible with the Convention rights."*

7. Policy background

7.1 Currently, any applicants wishing to challenge Scottish Ministers' decisions in respect of applications for all types of Marine Licences concerning activities in the Scottish inshore or offshore regions may appeal to the Sheriff, by Summary Application. The procedure for challenging Scottish Ministers' decisions on applications for section 36 consent made under the Electricity Act 1989 is different as there is no express statutory right of appeal to the courts, and decisions made by Ministers in these cases can only be challenged by applicants or interested parties by way of judicial review. The same is true for challenges made by third parties in respect of marine licensing decisions. The process for challenging marine licence decisions for electricity generating stations situated in the Scottish inshore region with a capacity of up to 1 Megawatt and such stations situated in the Scottish offshore region with a capacity of up to 50 megawatt will continue unchanged – for such projects, section 36 consent under the Electricity Act 1989 is not required.

Proposals for change

7.2 The 2014 Act amends the Marine (Scotland) Act 2010 to provide aggrieved persons with a right to challenge certain marine licensing decisions; and decisions on whether to cause a public inquiry; and provides for a statutory appeal direct to the Inner House of the Court of Session. Such decisions are only in relation to cases where an application for consent under section 36 of the Electricity Act 1989 to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations within the Scottish inshore (out to 12 nautical miles) is required to be determined.

7.3 This Order makes parallel provision in the Marine and Coastal Access Act 2009 in respect of such marine licensing decisions for generating stations to be situated in the Scottish offshore region (12 to 200 nautical miles) and in the Electricity Act 1989 in respect of all offshore generating stations to provide for a uniform appeal regime across the three Acts.

7.4 The amendments made by the Order to the Marine and Coastal Access Act 2009 and the Electricity Act 1989 do not apply to marine licence or section 36 consent decisions made before the commencement of the Order.

7.5 The Order will also make further minor or consequential changes such as changes to tax provisions in consequence of the new authorisation framework created by sections 16-19 of the 2014 Act and the repeal of a number of spent enactments.

8. Consultation outcome

8.1 Although there has been no public consultation specific to the amendments of this Order, the UK Government departments with responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. All amendments contained in this Order have the approval of the relevant departments.

8.2 With regard to wider consultation, prior to the introduction of the Regulatory Reform (Scotland) Bill, the Scottish Government ran various separate consultations given that the Bill covered a diverse range of policy areas under the Scottish Government's Better Regulation, and Better Environmental Regulation agendas. Details of the two main consultations follow in 8.3 and 8.4.

8.3 Regulatory functions, marine licensing decisions and planning authorities' functions: charges and fees were consulted on from August to October 2012 in the Proposals for a Better Regulation Bill: Consultation (http://www.scotland.gov.uk/Publications/2012/08/8403). An independent analysis (http://www.scotland.gov.uk/Publications/2013/03/6019) and summary analysis (http://www.scotland.gov.uk/Publications/2013/03/1930) of the 80 individual responses (http://www.scotland.gov.uk/Publications/2012/12/4140/0) was also carried out. The Scottish Government also published a response to the analysis

(http://www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/BetterRegulationBillConsultation/RRBConsultation/SGResponse).

8.4 Environmental Regulation was consulted on jointly by the Scottish Government and the Scottish Environment Protection Agency from May to August 2012 in the Consultation on Proposals for an Integrated Framework of Environmental Regulation (http://www.scotland.gov.uk/Resource/0039/00392549.pdf). An analysis of responses was published in December 2012 (http://www.scotland.gov.uk/Resource/0041/00411494.pdf).

9. Guidance

This Order stands alone, guidance is not necessary.

10. Impact

10.1 This instrument has no impact of a regulatory nature on the private sector or civil society organisations and will not impose or reduce costs

10.2 There will be no impact on the public sector.

10.3 A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

11. Regulating small business

The legislation could apply to small business. However, the impact is negligible as it will ensure that the existing treatment applies in relation to permits granted under the new authorisation framework.

12. Monitoring & review

The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order are required.

13. Contact

Emma Lopinska at the Scotland Office (Tel: 0131 244 9016 or email: emma.lopinska@scotlandoffice.gsi.gov.uk) can answer any queries regarding the instrument.