Regulatory Reform (Scotland) Bill

Bill Number: SP Bill 26
Introduced on: 27 March 2013
Introduced by: Fergus Ewing MSP (Government Bill)
Passed: 16 January 2014
Royal Assent: 19 February 2014

Passage of the Bill

The Regulatory Reform (Scotland) Bill was introduced in the Scottish Parliament on 27 March 2013. On 16 April, the Parliamentary Bureau referred the Bill to the Economy, Energy and Tourism (EET) Committee as the lead committee, with the Rural Affairs, Climate Change and Environment (RACCE) Committee acting as secondary committee. The RACCE Committee focused its scrutiny on Part 2 of the Bill, as well as certain aspects of Part 1 (those that related to the Scottish Environment Protection Agency and Scottish Natural Heritage).

The EET Committee took oral evidence on the general principles of the Bill over four weeks commencing on 5 June; the RACCE Committee took evidence on 22 May and 5 June. The EET Committee’s Stage 1 Report incorporated the report of the RACCE Committee, and was published on 8 October, with the Stage 1 debate taking place on 12 November. Stage 2 proceedings took place on 4 December, and the Stage 3 debate took place on 16 January 2014. The Bill received Royal Assent on 19 February 2014 to become the Regulatory Reform (Scotland) Act 2014.

Purpose and objectives of the Bill

The Regulatory Reform (Scotland) Bill aimed to:

- Improve the way regulation is developed and applied, creating more favourable business conditions in Scotland and delivering benefits for the environment
- Protect people and environment, help businesses to flourish and create jobs
Provisions of the Bill

Part 1 of the Bill related to Regulatory Functions and had three main elements:

- Encouraging and improving consistency in the exercise of regulatory functions e.g. environmental health. The Bill allowed for the implementation of national regulation systems, although there remains scope for regulators to make a case for local variation
- A duty on listed regulators to exercise functions in a way that contributes to achieving sustainable economic growth
- Provision for a code of practice in relation to the exercise of regulatory functions

Part 2 of the Bill related to Environmental Regulation and had five main chapters:

- Chapter 1 allowed Scottish Ministers to bring forward secondary legislation to simplify and update the objectives and duties of SEPA’s diverse regulatory framework into one statutory purpose, i.e. that all of its functions are for the purpose of “protecting and improving the environment”
- Chapter 2 allowed for regulations to be made which give SEPA additional powers relating to enforcement, as follows: fixed monetary penalties, variable monetary penalties, non-compliance penalties, enforcement undertakings, and cost recovery
- Chapter 3 related to court powers, and set out provision for compensation orders, fines and publicity orders
- Chapter 4 allowed for a new and broad range of miscellaneous provisions such as: vicarious liability, offence relating to significant environmental harm, contaminated land and special sites, waste management authorisations – offences by partnerships, and air quality assessments
- Chapter 5 amended the Environment Act 1995 by inserting a general purpose for SEPA to ensure that it contributes to improving the health and well-being of people in Scotland and achieving sustainable economic growth

Part 3 of the Bill made provision for amendments to three miscellaneous regulatory regimes, as follows:

- Section 40 extended statutory appeal mechanisms to decisions by Scottish Ministers relating to offshore marine energy projects of 1MW and above within Scottish waters
- Section 41 allowed Scottish Ministers to make provision in planning fee Regulations for different fees to be levied by different planning authorities where Scottish Ministers are satisfied that the performance
of the Planning Authority is not, or has not been, carried out satisfactorily

- Section 42 amended the Civic Government (Scotland) Act 1982 to allow street traders who operate mobile food businesses to trade in more than one area in Scotland, using a certificate from the same registering authority for each licence application

**Parliamentary consideration**

The main issues identified at Stage 1 were:

- Whether there was an adequate definition of sustainable economic growth, and whether the regulators’ duty in respect of this was appropriate
- Whether the regulators’ duty in respect of sustainable economic growth should be removed, or amended to relate to sustainable development
- Whether planning authorities and licensing boards would be included in the list of regulators covered by Parts 1 and 2 of the Bill
- Whether the six week statutory appeal time limit for marine licencing decisions would impact on business confidence, investment, and the ability of individuals, communities and small businesses to appeal
- Whether linking fees to the performance of planning authorities could adversely affect the performance of the authority and the range of services that it could provide

The EET Committee Stage 1 Report recommended that the general principles of the Bill be agreed; however there was a division, with 7 for and 2 against.

At Stage 2, the EET Committee, as lead Committee, considered amendments relating to all parts of the Bill. Approximately 115 amendments were submitted. The majority of these were submitted by the Scottish Government, and were technical in nature. One Government amendment provided for the imposition of fixed penalties as part of the enforcement of carrier bag charging offences. This aimed to provide local authorities (or other ‘enforcement authorities’) with a more proportionate and cost-efficient enforcement option.

Of the amendments that were not agreed to at Stage 2, the main ones sought to leave out the regulators’ duty in respect of sustainable economic growth or replace it with one in respect of sustainable development, and to require Scottish Ministers to take all reasonable steps to support a planning authority to improve its performance, and to prepare and publish guidance setting out the principles to which they must have regard in determining whether the functions of a planning authority were not being, or had not been performed satisfactorily.

At Stage 3, amendments relating to the duty in respect of sustainable economic growth, and supporting a planning authority to improve its performance were revisited and not agreed to. Similarly, an amendment which
sought to remove the provision for the imposition of fixed penalties as part of enforcement of carrier bag charging offences was not agreed to.

Eight minor and technical Scottish Government amendments were agreed to.

The Bill, as amended at Stage 3, was passed following a division: For 93, Against 2, and Abstentions 1.