STATUTORY INSTRUMENTS

2015 No. 48

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
WATER SUPPLY

The Reservoirs (Scotland) Act 2011 (Restrictions on Disclosure of Information in relation to National Security etc.) Order 2015

Made - - - - 21st January 2015
Coming into force in accordance with article 1(2) and (3)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (3) and (5) of the Scotland Act 1998(**1**).

In accordance with paragraphs 1, 2 and 3 of Schedule 7 to that Act a draft of this Order has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Reservoirs (Scotland) Act 2011 (Restrictions on Disclosure of Information in relation to National Security etc.) Order 2015.

(2) Subject to paragraph (3), this Order comes into force on 1st April 2015.

(3) Article 15 comes into force on the day on which section 8(2) of the Act comes into force for all purposes.

(4) Article 14 extends to Scotland only.

(5) Article 15 extends to England and Wales and Scotland only.

Interpretation

2. In this Order—

"the Act" means the Reservoirs (Scotland) Act 2011(**2**);

"controlled reservoir" is to be construed in accordance with sections 1 and 2 of the Act;

"controlled reservoirs register" has the same meaning as in section 9 of the Act;

(**1**) 1998 c.46.
(**2**) 2011 asp 9.

"flood plan" has the same meaning as in section 55 of the Act (and includes a copy of any such plan);

"relevant authority" means the Scottish Ministers or SEPA;

"the reservoir manager" has the same meaning as in section 3 of the Act;

"relevant person" means a person (other than a relevant authority) who—

(a) is required to—

(i) prepare the flood plan;

(ii) produce or submit the plan to any other person;

(iii) review or update the plan; or

(iv) publish or distribute copies of it;

(b) receives (or may receive)—

(i) the flood plan;

(ii) a review or update of the plan; or

(iii) information contained in or relating to the plan (or any review or update of it); or

(c) is the reservoir manager of the reservoir to which the flood plan relates; and

"SEPA" means the Scottish Environment Protection Agency(**3**).

Restrictions on disclosure of information about controlled reservoirs by relevant authority

3.—(1) If the Secretary of State is of the opinion that disclosure of any information relating to a controlled reservoir would be contrary to the interests of national security, the Secretary of State may serve on a relevant authority a notice (a "non-disclosure notice") in relation to that information.

(2) The non-disclosure notice must—

(a) be in writing;

(b) specify the information to which it relates; and

(c) state whether article 4 applies to any of that information and, if so, which information.

(3) Where a non-disclosure notice has been served in respect of any information—

(a) the relevant authority on whom the notice is served must not—

(i) publish the information (or any part of it);

(ii) disclose the information (or any part of it) to any person; or

(iii) require a person to publish or disclose to another the information (or any part of it); and

(b) where the relevant authority on whom the notice is served is SEPA, SEPA must ensure that the information is not included in the controlled reservoirs register.

4. Where a non-disclosure notice states that this article applies to any information specified in the notice, the relevant authority on whom the notice is served must not give any indication of the existence of the information to any other person.

5. Articles 3(3) and 4 do not apply to the extent that they would prevent a relevant authority from complying with any other duty imposed on it by virtue of—

(a) the Environmental Information (Scotland) Regulations 2004(**4**);

(**3**) SEPA was established by section 20 of the Environment Act 1995 (c.25).
(**4**) S.S.I. 2004/520, as amended by S.S.I. 2013/127.

(b) the Freedom of Information (Scotland) Act 2002(**5**);

(c) a constable acting in the course of the constable's duties; or

(d) an order of a court of competent jurisdiction.

6. The Secretary of State may revoke a non-disclosure notice served on a relevant authority by serving on the authority a notice in writing stating that the non-disclosure notice is revoked.

7. The Secretary of State must send a copy of a non-disclosure notice (and any notice under article 6) served on a relevant authority to the other relevant authority as soon as reasonably practicable after serving the notice.

Restrictions on disclosure of information relating to flood plans by relevant persons

8.—(1) If the Secretary of State is of the opinion that publication of a flood plan or any information contained in or relating to it would be contrary to the interests of national security, the Secretary of State may serve on a relevant person a notice ("a non-publication notice") requiring the person not to publish (or not to publish except as may be specified in the notice)—

(a) the flood plan;

(b) any review or update of the plan; or

(c) any information contained in or relating to the plan (or any review or update of it).

(2) The non-publication notice may—

(a) require the person on whom it is served to prevent access by any other person to—

(i) the flood plan;

(ii) any review or update of the plan; or

(iii) any information referred to in paragraph (1)(c),

to which the notice applies, except as may be specified in the notice; and

(b) specify requirements as to the storage of the plan in the interests of national security.

(3) The non-publication notice must—

(a) be in writing;

(b) specify the information to which it relates; and

(c) state whether article 9 applies to any of that information and, if so, which information.

9. Where a non-publication notice states that this article applies to any of the information specified in the notice, the relevant person on whom the notice is served must not give any indication of the existence of the information to any other person.

10. The Secretary of State may revoke a non-publication notice served on a relevant person by serving on the person a notice in writing stating that the non-publication notice is revoked.

Offences

11.—(1) Any person on whom a non-publication notice is served under article 8(1) commits an offence if the person, without reasonable excuse, fails to comply with—

(a) a requirement of the notice; or

(b) article 9, in so far as that article applies in relation to the notice.

(**5**) 2002 asp 13, as amended by S.I. 2006/1031, the Equality Act 2010 (c.15), Schedule 26, paragraphs 103 and 104, the Public Services Reform (Scotland) Act 2010 (asp 8), section 4(5)(a), the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11), schedule 4, paragraphs 1 to 7, S.I. 2011/1043, the Freedom of Information (Amendment) (Scotland) Act 2013 (asp 2), sections 1 to 5, and S.S.I. 2013/365; there are other amendments which are not relevant to this Order.