

POLICY NOTE

THE RESERVOIRS (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 1) ORDER 2014

S.S.I. 2014/348 (C. 30)

1. The above instrument has been made in exercise of the powers conferred on Scottish Ministers by section 116(1) of the Reservoirs (Scotland) Act 2011 and all other powers enabling them to do so. It is subject to the negative procedure.

Policy Objectives

2. The delay in commencement of enabling powers until now has been necessary to enable SEPA to prepare for taking over the regulatory responsibility for enforcing reservoir safety from local authorities. A key step in this process was commissioning the production of inundation maps for reservoirs currently regulated under the Reservoirs Act 1975. This information is vital for designation of reservoirs under Chapter 3 of the Reservoirs (Scotland) Act 2011('the Act').

3. In addition a section 104 Order under the Scotland Act 1998 has been developed which will enable the UK Secretary of State to prevent the publication or sharing of information collected or held in relation to reservoirs under the Act which is deemed to be a matter of national security. It was beneficial to have this in place before the creation of the new register to ensure there is clarity on what data can be shared and published.

4. This instrument commences a number of sections of the Reservoirs (Scotland) Act 2011. This initial commencement Order will be followed by a second Order in Spring 2015, which will enable SEPA to create the register under section 9 of the Act and engineers to be appointed to the new panels of reservoir engineers. Once the six month registration period is complete, Chapter 3 will be commenced, enabling SEPA to complete the risk designation process. Once the risk designation process is complete, Chapter 5 will be commenced and the Reservoirs Act 1975 repealed as it applies in Scotland.

5. The commencement of Sections 10(2), 12(1), 14, 15(4) will enable further orders and regulations to be made which will establish the detailed framework for the creation of a register of reservoirs by SEPA. The registration requirement will be commenced alongside existing registrations requirement under the 1975 Act for a transitional period until SEPA is in a position to take on full responsibility for regulating reservoir safety.

6. Commencing sections 22(4), 23(8) and 24(7) will enable further provision to be made in relation to the risk designation process including guidance, reviews and appeals. Chapter 5 of the Act cannot be commenced until this process has been completed and reservoir managers know which sections of the Act apply to their reservoirs.

7. The commencement of sections 27(a), 28(7) and (8), 30(2) and 31(1)(b) and (2) will enable the creation of new panels of engineers for Scotland in preparation for the commencement of Chapter 5. To ensure a smooth transition from one regime to the next, provision will be made so that Engineers appointed under the current panels can operate under the new Scottish panels until such time as their appointment to the current panels is

due for renewal. Commencing sections 32(4)(b), 35(1)(d), 38(3)(c), 51(1)(e), 51(2), 56(3) and 57(2) and (3) will enable provision to be made in relation to the contents of reports, records and notices required under the Act. Such provision will clarify to engineers and reservoir managers the detail of what is required ahead of commencement of Chapter 5 and enable templates to be created to ensure a consistent approach is adopted.

8. Commencing sections 69(7) and (8), 73 to 76, 82 to 85, 86, 87, 88, 89 and 90 enable the provision of enforcement measures and associated procedures to be developed that will complement those that will be established under the Regulatory Reform (Scotland) Act 2014.

9. This instrument also commences Part 2: Protection of the Water Environment – remedial and restoration measures. The Water Environment and Water Services (Scotland) Act 2003 (WEWS) empowered Scottish Ministers to make regulations in connection with the remediation or restoration of the water environment. However, powers for the creation of offences in respect of such regulations were not provided in WEWS, and these were subsequently provided at section 109 of the Reservoirs (Scotland) Act 2011. Commencing section 109 will enable regulations to be made for this purpose.

Consultation

10. This instrument brings a number of powers within the Reservoirs (Scotland) Act 2011 into force in preparation for further implementation of the Act. A formal public consultation has been carried out and the comments from stakeholders have been considered when drafting the instrument. This Order has also been shared with representatives from SEPA, The Institution of Civil Engineers, Scottish Water, and other industry representatives.

Financial Effects

11. A Business and regulatory impact assessment has been prepared. The changes introduced by this instrument are not expected to have any significant financial impact on the Scottish Government or Scottish businesses, as the regulations will take effect at the beginning of the financial year, in line with the yearly updates to payroll systems.