

DRAFT STATUTORY INSTRUMENTS

2015 No.

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 - - - - - *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(a).

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(b);

“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;

(a) 1998 c.46.

(b) 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^(a).

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^(b);

(a) SEPA was established by section 20 of the Environment Act 1995 (c.25).

(b) S.S.I. 2004/520, as amended by S.S.I. 2013/127.

- (b) the Freedom of Information (Scotland) Act 2002(a);
- (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.

(a) 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.

- (2) A person who commits an offence under paragraph (1) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine (or both).

(3) If section 85(2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012^(a) is in force on the day on which this Order is made, sub-paragraph (a) of paragraph (2) is to be read, in its application to England and Wales, as if the words “not exceeding the statutory maximum” were omitted.

(4) A person does not commit an offence under paragraph (1) if the person fails to comply with a requirement of the notice or article 9 in order to comply with any duty imposed on the person by virtue of—

- (a) the Environmental Information (Scotland) Regulations 2004;
- (b) the Freedom of Information (Scotland) Act 2002;
- (c) a constable acting in the course of the constable’s duties; or
- (d) an order of a court of competent jurisdiction.

Offences by bodies corporate

12.—(1) Where—

- (a) an offence under this Order has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
 - (i) a relevant individual; or
 - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual (as well as the body corporate, partnership or, as the case may be, other unincorporated association) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1), “relevant individual” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, the members;
- (b) in relation to a Scottish partnership, a partner; and
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Transfer of information between the relevant authorities

13. Nothing done by virtue of this Order prevents the transfer of information between the relevant authorities.

Disapplication of duties under the Act

14.—(1) The duty in section 9(1) of the Act (controlled reservoirs register) to establish and maintain a register containing the information and documents set out in section 9(2) (and, as the case may be, specified by regulations under section 9(3)) of the Act does not apply in relation to any information that is specified in a non-disclosure notice served under article 3(1).

(a) 2012 c.10.

(2) Any duty imposed on a relevant authority or, as the case may be, a relevant person by regulations under section 55(1) of the Act (flood plans) to publish a flood plan or any information contained in or relating to a flood plan (including any review or update of it) does not apply—

- (a) in relation to any information that is specified in a non-disclosure notice served under article 3(1); or
- (b) to the extent that compliance with the duty is prevented by virtue of a requirement of a non-publication notice served under article 8(1).

Amendment of the Flood and Water Management Act 2010

15. In Schedule 4 to the Flood and Water Management Act 2010(a) (cross-border England-Scotland reservoirs), in paragraph 43(1)(d), for the words from “1975” to the end substitute “Reservoirs (Scotland) Act 2011 and any order or regulations made, guidance issued or directions given under that Act”.

Crown application

16.—(1) The provisions of this Order bind the Crown.

(2) No contravention by the Crown of any such provision makes the Crown criminally liable.

(3) But the Court of Session may, on the application of the Secretary of State or a person authorised by the Secretary of State, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(4) Despite paragraph (2), the provisions of this Order apply to persons in the public service of the Crown as they apply to other persons.

Dover House,
London
Date

Name
Parliamentary Under Secretary of State

(a) 2010 c.29, to which there are amendments not relevant to this Order.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision in consequence of the Reservoirs (Scotland) Act 2011 (“the Act”) including, in particular, section 9 (controlled reservoirs register) and section 55 (flood plans). Section 9 of the Act requires the Scottish Environment Protection Agency (“SEPA”) to maintain a register containing, among other things, a map showing the area of land which would be likely to be flooded in the event of an uncontrolled release of water from a controlled reservoir. Section 55 of the Act empowers the Scottish Ministers to make provision in relation to the preparation of flood plans for controlled reservoirs setting out the action to be taken by the reservoir managers to control or mitigate the effects of flooding from any escape of water from any such reservoir.

Article 3 empowers the Secretary of State, if of the opinion that disclosure of information about a controlled reservoir would be contrary to the interests of national security, to serve a notice on the Scottish Ministers or SEPA in relation to that information. The effect of such a notice is to require the exclusion of the information from the controlled reservoirs register and to prohibit the disclosure of the information by Scottish Ministers or SEPA. In addition, if the notice states that article 4 applies to any information in the notice, the Scottish Ministers or, as the case may be, SEPA must not give to any person any indication of the existence of that information (article 4).

Article 5 provides that any restrictions on the disclosure of information imposed by articles 3(3) and 4 do not apply to the extent that they would prevent the Scottish Ministers and SEPA from complying with any duty imposed on them by virtue of the Environmental Information (Scotland) Regulations 2004, the Freedom of Information (Scotland) Act 2002, a constable acting in the course of the constable’s duties or a court order.

Article 6 empowers the Secretary of State to revoke a notice served under article 3(1).

Article 8 empowers the Secretary of State, if of the opinion that publication of a flood plan or any information in relation to a flood plan would be contrary to the interests of national security, to serve a non-publication notice on any relevant person. The effect of such a notice is to prohibit the publication of the information, except as may be permitted by the notice. In addition, if the notice states that article 9 applies to any information in the notice, the person on whom it is served must not give to any other person any indication of the existence of that information (article 9).

Article 10 empowers the Secretary of State to revoke a notice served under article 8(1).

Article 11 contains offence provisions and article 12 makes specific provision in relation to offences by bodies corporate.

Article 13 provides that nothing done by virtue of this Order prevents the Scottish Ministers and SEPA from sharing information.

Article 14 provides that the duty in section 9(1) of the Act to include information in a controlled reservoirs register does not apply to information specified in a non-disclosure notice served under article 3(1). It also provides that any duty imposed by regulations under section 55(1) of the Act to publish a flood plan (or any information relating to a flood plan) does not apply in relation to information specified in a non-disclosure notice served under article 3(1) or to the extent that the duty is prevented by virtue of a requirement of a non-publication notice served under article 8(1).

Article 15 updates the definition “the Scottish regime” in paragraph 43 of Schedule 4 to the Flood and Water Management Act 2010 with effect from the date on which the Reservoirs Act 1975 is, in so far as it extends to Scotland, repealed.

Article 16 makes provision in relation to Crown application.

A full impact assessment has not been produced for this instrument as no impact on the private sector and civil society organisations is foreseen.

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