

**EXPLANATORY MEMORANDUM TO THE
THE WATER ENVIRONMENT (CONTROLLED ACTIVITIES) (SCOTLAND)
REGULATIONS 2005 (NOTICES IN THE INTERESTS OF NATIONAL SECURITY)
ORDER 2006**

2006 No. 661 (S. 5)

1. This explanatory memorandum has been prepared by the Ministry of Defence (MOD) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 In the interests of national security, a section 104 Order will empower the Secretary of State for Defence to direct that information provided under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) - SSI 2005/348 which is judged by him to be sensitive will not be disclosed to a third party.

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

3.1 None

4. Legislative Background

4.1 CAR will significantly change how water resources are managed in Scotland. CAR allows the Scottish Environment Protection Agency (SEPA) to regulate water related activities such as water abstraction and pollution control activities from 1 April 2006.

4.2 Discussions have taken place between MOD and the Scottish Executive about the best way to protect the interests of national security in the context of Scotland's new water regulation regime - CAR. This aim could be achieved by empowering the Secretary of State to direct that information judged by him to be sensitive not be disclosed by SEPA or the Scottish Ministers to any third party.

4.3 The power would be conferred on the Secretary of State by an Order made under section 104 of the Scotland Act 1998. Section 104 Orders are made by the UK Government where necessary or expedient in consequence of any provision in Scottish legislation (they are laid before the UK Parliament).

5. Extent

5.1 This instrument applies to Scotland only.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The s104 Order has been made following agreement between the MOD and Scottish Executive.

7.2 The MOD has consulted the Office of the Solicitor General for Scotland (OSAG) to ensure that the Order does not cut across freedom of information legislation.

7.3 Similar issues have been discussed between the MOD and the Department for Environment, Food and Rural Affairs (DEFRA) in consultation over the Water Act 2003 (Consequential and Supplementary Provisions) Regulations 2005 (SI 2005/2035). As a result, the revised regulations contain provisions for the Secretary of State for Defence to advise of sensitive information that will be withheld from the public domain.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is minimal, as the Order will only restrict the release of sensitive information to a third party by SEPA or Scottish Ministers. It does not diminish the amount of information that will be provided by MOD to comply with the new regulations.

9. Contact

Mrs S J McIntosh at the Ministry of Defence Tel: 0202 7218 0564 can answer any queries regarding the instrument.