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## 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.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Reservoirs (Scotland) Act 2011 (Restrictions on Disclosure of Information in relation to National Security etc.) Order 2015 No. 48

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.