

**2002 No. 1264 (S. 4)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**WATER, SCOTLAND**

**The Water Industry (Scotland) Act 2002 (Directions in the  
Interests of National Security) Order 2002**

<i>Made</i>	<i>1st May 2002</i>
<i>Laid before Parliament</i>	<i>8th May 2002</i>
<i>Coming into force</i>	<i>31st May 2002</i>

The Secretary of State in exercise of the powers conferred upon her by sections 104, 112(1) and 113 of the Scotland Act 1998(a) and of all other powers enabling her in that behalf, hereby makes the following Order:

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Water Industry (Scotland) Act 2002 (Directions in the Interests of National Security) Order 2002 and shall come into force on 31st May 2002.

(2) In this Order, “Scottish Water” means the body corporate established by section 20(1) of the Water Industry (Scotland) Act 2002(b).

**Directions in the interests of national security**

2.—(1) The Secretary of State may, after consultation with Scottish Water, give Scottish Water such directions of a general character as appear to the Secretary of State to be requisite or expedient—

- (a) in the interests of national security; or
- (b) for the purpose of mitigating the effects of any civil emergency which may occur.

(2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, the Secretary of State may, after consultation with Scottish Water, give Scottish Water a direction requiring that it does or, as the case may be, does not do a particular thing specified in the direction.

(3) Scottish Water, notwithstanding any other duty imposed on it by, under or by virtue of this Order or any other enactment, shall comply with any direction given to it under this article by the Secretary of State.

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(a) 1998 c.46.  
(b) 2002 asp 3.

(4) A person shall not disclose, or be required on any basis whatsoever to disclose, anything done by virtue of this article if the Secretary of State is of the opinion that disclosure of the thing would be against the interests of national security and has notified that person of that opinion.

(5) A person who, in contravention of paragraph (4) above, discloses anything is guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(6) In paragraphs (1) and (2) above, “civil emergency” means a natural disaster or other emergency which in the opinion of the Secretary of State is, or may be, likely—

(a) so to disrupt water supplies, the provision of sewerage or disposal of sewage in; or

(b) so to involve such destruction of, or damage to, life or property in, any area as seriously and adversely to affect all the inhabitants of the area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.

### **Functions exercisable by the Scottish Ministers and the Secretary of State**

3.—(1) Subject to paragraph (2) below, the functions which are exercisable by the Secretary of State under article 2(1), (2) and (4) above shall, so far as they are exercisable in or as regards Scotland, be exercisable by the Scottish Ministers concurrently with the Secretary of State.

(2) The functions referred to in paragraph (1) above shall be exercisable by the Scottish Ministers only after consultation with the Secretary of State.

### **Laying of directions**

4.—(1) The Scottish Ministers shall, except in a case where the Secretary of State is of the opinion that disclosure of the direction is against the interests of national security, lay before the Scottish Parliament a copy of any direction given by them or the Secretary of State under this Order.

(2) The Secretary of State shall lay before each House of Parliament a copy of any direction given by the Secretary of State under this Order unless the Secretary of State is of the opinion that disclosure of the direction is against the interests of national security.

*HELEN LIDDELL*  
Secretary of State for Scotland

Scotland Office  
Dover House,  
London  
1st May 2002

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order makes provision consequential on the Water Industry (Scotland) Act 2002 which, amongst other things, established Scottish Water and repealed section 117 of the Local Government etc. (Scotland) Act 1994 (“the 1994 Act”). Section 117 of the 1994 Act enabled the Secretary of State to give directions to the new water and sewerage authorities (now replaced by Scottish Water) in the interests of national security or for mitigating the effects of any civil emergency. This provision was amended (in part) by article 3 of and Schedule 2 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (“the 1999 Order”), so that the Scottish Ministers could also give directions, after consultation with the Secretary of State. The purpose of this Order is to confer on the Secretary of State and the Scottish Ministers the power to give directions to Scottish Water in the interests of national security or for mitigating the effects of any civil emergency.

Article 2 enables the Secretary of State, after consultation with Scottish Water, to give it directions in the interests of national security or for mitigating the effects of any civil emergency which may occur or directions to do or omit to do a specified thing, in the interests of national security or for mitigating the effects of any civil emergency which has or may occur. It also makes provision as regards the disclosure of directions. Any person who contravenes the disclosure provision is guilty of an offence and liable on conviction on indictment to imprisonment for up to 2 years and/or a fine.

Article 3 provides that specified functions conferred on the Secretary of State under article 2 of the Order are, so far as they are exercisable in or as regards Scotland, exercisable by the Scottish Ministers concurrently with the Secretary of State. Any such functions are exercisable by the Scottish Ministers only after consultation with the Secretary of State.

Article 4 makes provision for the laying of directions before the Scottish Parliament or each House of Parliament, as appropriate. It mirrors the former provisions under section 117 of the 1994 Act, as amended by article 6 of and Schedule 5 to the 1999 Order.

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