

**2006 No. 661 (S. 5)**

**CONSTITUTIONAL LAW**

**DEVOLUTION, SCOTLAND**

**ENVIRONMENTAL PROTECTION**

**WATER**

The Water Environment (Controlled Activities) (Scotland)  
Regulations 2005 (Notices in the Interests of National Security)  
Order 2006

<i>Made</i> - - - -	<i>9th March 2006</i>
<i>Laid before Parliament</i>	<i>15th March 2006</i>
<i>Coming into force</i> - -	<i>5th April 2006</i>

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113 of the Scotland Act 1998(a):

**Citation and commencement**

1.—(1) This Order may be cited as the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (Notices in the Interests of National Security) Order 2006.

(2) This Order shall come into force on 5th April 2006.

**Interpretation**

2. In this Order—

“controlled activity” has the same meaning as in the Regulations;

“controlled activity site” means any site where a controlled activity is carried on and which either is, or supplies potable water to, a defence establishment;

“defence establishment” means any site occupied for the purposes of—

- (i) the Secretary of State for Defence;
- (ii) the Defence Council;
- (iii) any of the armed forces of the Crown;
- (iv) any visiting force as defined in the Visiting Forces Act 1952(b); or

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(a) 1998 c.46.  
(b) 1952 c.67.

- (v) any international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964<sup>(a)</sup>;
- “the Regulations” means the Water Environment (Controlled Activities) (Scotland) Regulations 2005<sup>(b)</sup>; and
- “the relevant authorities” means the Scottish Ministers and the Scottish Environment Protection Agency.

### **Issuing of non-disclosure notices**

**3.**—(1) If the Secretary of State is of the opinion that disclosure of any information relating to a controlled activity site would be contrary to the interests of national security, he may issue to the relevant authorities a non-disclosure notice in relation to that information.

- (2) A non-disclosure notice made under paragraph (1) shall—
- (a) be in writing;
  - (b) specify the information to which it relates; and
  - (c) state whether or not article 5 shall apply to any of the information specified in that notice.

### **Effect of non-disclosure notices**

**4.** Where a non-disclosure notice has been issued in respect of any information—

- (a) that information shall not be included—
  - (i) in the register maintained by virtue of regulation 33(1) of the Regulations;
  - (ii) in any advertisement made by virtue of a requirement to advertise imposed in exercise of the power conferred by regulation 13(1) of the Regulations; and
- (b) subject to article 6, the relevant authorities shall not—
  - (i) publish that information or any part of it;
  - (ii) disclose that information or any part of it to any person; or
  - (iii) require any other person to publish or disclose to another that information or any part of it

save where required to take any of these steps by a constable acting in the course of his duty or by an order of a court of competent jurisdiction.

**5.** Subject to article 6, where a non-disclosure notice states that this article shall apply to any of the information specified in it—

- (a) the relevant authorities shall not give to any person, other than a constable acting in the course of his duty, any indication of the existence of that information save where required to do so by an order of a court of competent jurisdiction; and
- (b) regulation 33(2) of the Regulations shall not apply in respect of that information.

**6.**—(1) In respect of any information to which a non-disclosure notice relates, the Secretary of State may make such exemptions from the duties imposed by articles 4(b) and 5 as appear to him to be appropriate.

(2) An exemption made pursuant to paragraph (1) shall only have effect if set out expressly on the face of the non-disclosure notice which relates to the information.

**7.**—(1) Subject to paragraph (2) the relevant authorities shall comply with the duties imposed by articles 4 and 5 notwithstanding any other duty or discretion imposed or conferred on them by any enactment.

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(a) 1964 c.5.  
(b) S.S.I. 2005/348.

(2) The relevant authorities shall not be bound by articles 4 and 5 to the extent that they prevent compliance with the enactments referred to in paragraph (3).

(3) The enactments referred to in paragraph (2) are—

- (a) The Freedom of Information (Scotland) Act 2002(a); and
- (b) The Environmental Information (Scotland) Regulations 2004(b).

#### **Revocation and variation of non-disclosure orders**

8. The Secretary of State may vary or revoke a non-disclosure notice by issuing a further notice to that effect.

#### **Transfer of information between the relevant authorities**

9. Nothing in this Order shall prevent the transfer of information between the relevant authorities.

9th March 2006

*Don Touhig*  
Parliamentary Under Secretary of State  
Ministry of Defence

#### **EXPLANATORY NOTE**

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

This Order makes provision consequential on the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (“the 2005 Regulations”), made under the Water Environment and Water Services (Scotland) Act 2003. The 2005 Regulations provide the mechanism by which activities which impact on the water environment are authorised and regulated in Scotland. The 2005 Regulations apply to “controlled activities” as defined in regulation 2 of the Regulations. Part III of the 2005 Regulations makes provision as to applications to the Scottish Environment Protection Agency (SEPA) for authorisations to carry on one or more controlled activities. Regulation 13(1) of the 2005 Regulations empowers SEPA to require that applications be publicly advertised. Regulation 32 of the 2005 Regulations empowers the Scottish Ministers and SEPA to obtain information, which may include information about controlled activities and the locations where they are carried on. Regulation 33(1) of the 2005 Regulations imposes a duty on SEPA to maintain a register containing particulars described in Schedule 8 of the Regulations, which may include information about controlled activities and the locations where they are carried on.

Article 3 empowers the Secretary of State to issue a non-disclosure notice if he is of the opinion that disclosure of information relating to a controlled activity site (as defined in Article 2) would be against the interests of national security.

Article 4 makes provision as to the effects of issuing a non-disclosure notice.

Article 5 applies to information where so stated in a non-disclosure notice and makes provision to prevent disclosure of that information’s existence.

Article 6 empowers the Secretary of State to make exemptions, in respect of any information to which a non-disclosure notice relates, from the duties imposed by articles 4(b) and 5.

Article 7 provides that the relevant authorities (the Scottish Ministers and SEPA) shall comply with their duties under the preceding two articles notwithstanding any other duty or discretion imposed or conferred by any enactment other than those set out.

Article 8 empowers the Secretary of State to revoke or vary non-disclosure notices.

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(a) 2002 asp 13.  
(b) S.S.I 2004/520.

Article 9 provides that the continued transfer of information between SEPA and the Scottish Ministers is unaffected.

**£3.00**

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3/2006

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