POLICY NOTE

THE RESERVOIRS (SCOTLAND) ACT 2011 (COMMENCEMENT NO. 3 AND TRANSITIONAL PROVISIONS) ORDER 2015

S.S.I. 2015/63 (C. 12)

1. The above instrument has been made in exercise of the powers conferred by sections 114(2)(a) and 116(1) of the Reservoirs (Scotland) Act 2011 ("the 2011 Act") and all other powers enabling them to do so.

Policy objectives

2. This Order gives effect to various provisions of the 2011 Act in so far as they apply in relation to reservoirs ("1975 Act reservoirs") which are, for the time being, required to be separately regulated under the Reservoirs Act 1975 ("the 1975 Act").

3. In particular, the Order brings into force a requirement for each existing 1975 Act reservoir to be additionally registered as a controlled reservoir under the 2011 Act. Reservoir managers will need to register these reservoirs before 1 October 2015. Reservoirs which become 1975 Act reservoirs after 1 April 2015 will also be required to be registered. These will require registration before the end of a period of 28 days after a 'preliminary certificate' is given in relation to the reservoir for the first time (under the 2011 Act or, where article 6 applies, the 1975 Act).

4. It also commences section 9 of the 2011 Act on 1 April 2015. This requires the Scottish Environment Protection Agency ("SEPA") to establish a controlled reservoirs register ("the register"). Section 9 is commenced in full because the date of its commencement is referred to in sections 11 to 13 and 16 of the 2011 Act (and any partial commencement might have made it difficult to determine this date).

5. Articles 3 and 4 ensure that section 9(2) (and therefore section 9(1)) of the 2011 Act has effect only in relation to 1975 Act reservoirs. This means that SEPA will not be required to populate the register with information and documents about other reservoirs until the provisions which require their registration are brought into force.

6. But for article 5, SEPA would (by virtue of section 9(2) of the 2011 Act) be required to populate the register with information and documents in relation to each controlled reservoir even before the reservoir is required to be registered. During this period, SEPA is unlikely to hold the necessary information.

7. Article 5 ensures that SEPA's duty to populate the register with information or documents in relation to a reservoir has effect as soon as the deadline for its registration expires. More specifically, the maps required by section 9(2)(h) need to be included only to the extent that SEPA holds these on or after 1st October 2015. Thereafter, if SEPA still doesn't have the information necessary to comply with this duty, it may request the information under section 98 of the 2011 Act.

8. Article 6 ensures that SEPA's duty to make the register (or a copy of it) available for inspection under section 9(4) has effect only in so far as the information to be included in the

register is held by SEPA on or after 1st October 2015. This is the date by which SEPA will have received the majority of information required to populate the register in relation to existing 1975 Act reservoirs.

9. Article 7 ensures that where section 13 of the 2011 Act has effect in relation to a 1975 Act reservoir, until a preliminary certificate is given under the 2011 Act, the reference to "preliminary certificate" in section 13 of the 2011 Act is to be construed as a reference to a preliminary certificate given under the 1975 Act.

10. The Order also brings into force section 27(b) of the 2011 Act which requires the Scottish Ministers to appoint appropriate persons to be members of each panel of reservoir engineers (established previously under section 27(a) of the 2011 Act).

11. Other provisions are brought into force for connected purposes.

Consultation

12. A public consultation was undertaken on the proposed commencement of the provisions which are brought into force by the Order. SEPA, the Institution of Civil Engineers, Scottish Water and other industry representatives were also separately consulted. No adverse comments were received.

Financial effects

13. A business and regulatory impact assessment was prepared. Further to this assessment, the Order is not expected to have any significant financial impact.

Environmental Quality
February 2015