

RESERVOIRS (SCOTLAND) ACT 2011

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Reservoirs

Chapter 1 – Controlled Reservoirs, Reservoir Managers Etc.

Section 1 – Controlled Reservoirs

7. The regulatory regime provided for in the Act only applies to “controlled reservoirs” as defined by the Act. The definition of a “controlled reservoir” is set out in sections 1 and 2 and includes structures designed or used for collecting and storing water, artificial or partly artificial lochs and other artificial areas which are capable of holding 10,000 cubic metres of water above the natural level of any part of the surrounding land. Subsection (3) provides that combinations of such structures are to be treated as controlled reservoirs where, notwithstanding that they do not meet the volume threshold individually, water can or does flow between them and there could be an uncontrolled release of 10,000 cubic metres of water as a result of the combined capacity and flow. This is intended to ensure that cascades or series of interlinked reservoirs are subject to control. Such combinations have the potential to cause a similar degree of risk to public safety as larger individual reservoirs, notwithstanding that the individual structures that comprise the combination might only hold a relatively small volume of water.
8. Subsection (4) enables the Scottish Ministers to provide by order that a particular structure or combination of structures is to be treated as a controlled reservoir notwithstanding that it may not meet the criteria set out in subsection (2) or (3). When doing so the Scottish Ministers must take into account the potential adverse consequences of an uncontrolled release of water from the structure or combination and the probability of such a release. This provision enables the Scottish Ministers to treat a smaller reservoir as a controlled reservoir if it is thought that, despite its smaller capacity, the risk that it poses is nevertheless a serious one.
9. Subsection (6)(a) enables the Scottish Ministers to make provision by order for a different volume of water to be substituted for the volume currently specified in sections 1(2), (3)(b) and (4)(b)(ii), sections 32(3) and (5), and sections 35(2)(b) and 39(3)(b). This enables the Scottish Ministers to alter the threshold above which reservoirs are deemed to be controlled reservoirs and therefore subject to the regulatory regime of the Act. Subsection (6)(b) enables the Scottish Ministers to determine in regulations when a loch or area is considered to be artificial or partly artificial, how the volume of water capable of being held is calculated, and the meaning of “natural level” and “surrounding land” for the purposes of this Part of the Act. Subsection (7) requires the Scottish Ministers to consult the Institution of Civil Engineers about the volume of water which should be specified in an order under subsection (6)(a) before making the order.